No. 12806

United States
Court of Appeals
for the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,
vs.
WESTERN CONSTRUCTION COMPANY, Respondent.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,
vs.
ALBIN JOHNSON, Respondent.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,
vs.
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,
vs.
J. A. JOHNSON Respondent.

Transcript of Record
In Two Volumes
Volume II
(Pages 335 to 701)

Petitions to Review Decisions of the Tax Court of the United States.

FILED
APR - 6 1957
PAUL P. O'BRIEN,
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(Testimony of George Johnson.)

Mr. Potts: At this time I would like to introduce another exhibit. Will you mark this for identification, Madam Clerk?

(Document above referred to marked Petitioners' Exhibit 8 for identification.)

Re-direct Examination

By Mr. Potts:

Q. Showing you, Mr. Johnson, Petitioner's Exhibit 8 marked for identification—this is a copy of this sheet from this book (indicating)—can you tell the Court what that exhibit is?

A. Well, it is a deposit—a bank deposit of $20,022.36. [178]

Q. To whose credit—to whose account?

A. That is to the credit of the Western Construction Company.

Q. And the date?

A. It was 5-12-42. It was $10,000 from Bernice Wallin and $10,000 from Lloyd Johnson, and Oscar Hanson $22.36.

Q. The Oscar Hanson item has nothing to do with the capital account of the limited partners, has it?

A. Oscar Hanson, if I remember right, he is a gardner. He has nothing to do with that.

Q. Can you tell the Court whether these items of $10,000 deposited from Bernice Wallin and Lloyd

(Testimony of George Johnson.)

Johnson covered their investment in the limited partnership, or not?

Mr. Payne: I object to the word, "investment," because we do not believe that there was any investment.

The Court: Well, as we announced some time ago, Mr. Payne, the Court is not going to be influenced by the form of the question of either party.

Mr. Payne: All right.

A. Yes. Bernice Wallin deposited $10,000, and Lloyd Johnson $10,000, on the fifth month, the 12th day in 1942 as an investment.

Mr. Potts: We offer Petitioners' Exhibit 8, Your Honor, in evidence, which is a copy of the deposit slip.

Mr. Payne: No objection. [179]

The Court: It will be received as Petitioners' Exhibit 8.

(Document heretofore marked Petitioners' Exhibit 8 for identification received in evidence.)

Mr. Potts: I think that is all from this witness, with the exception that I have stated before.

Recross-Examination

By Mr. Payne:

Q. May I ask you, Mr. Johnson, where that money came from, from Bernice and Lloyd Johnson? Where did they get that money, do you know?

A. Well, they got it from George Johnson.

(Testimony of George Johnson.)

Q. How did they get it? A. Well——

Q. (Interposing): Did they get it by——

A. (Interposing): By check.

Q. Do you know on what date—was it before this date?

A. Oh, yes, it was before that date.

Q. Now, did they endorse the check back to you, or did they give you a separate check, or did they give you cash, or how was that handled? Do you know?

A. I think our bookkeeper can tell you that.

Q. Anyway, this was a return to the Western Construction Company of the same amounts which you had given to them [180] previously?

A. Well, you will get that clear from the bookkeeper.

Q. I am asking you now. You ought to know.

A. If it was the same amount, I don't know for sure.

Q. Are these the same amounts as the notes?

A. These are the same amounts as the notes.

Q. And you gave them—you understand that you gave them previously enough money to take care of their obligation under their agreement to put that much money in the partnership?

A. Yes, sir.

Q. And you first gave it to them so that they could give it back to you?

A. In other words, it works out this way, that the same money as I had—in other words, the

(Testimony of George Johnson.)

money is no more or no less, but the children have guaranteed the payment, the loan of that money by a note, and in case that it would have been a loss in any of the future years, so that it would have been a loss instead of a gain, those notes are negotiable notes and that money—well, I believe the children could not have evaded paying them.

Q. Did you tell them to give the money to the Western Construction Company instead of to you?

A. Well, I really don't know that I told them, but it was naturally to give the money to the Western Construction [181] Company.

Q. Was it this way according to the plan when you drew the instruments, that you would give them the money and they would put the money in?

A. That is what we thought after we had this deal with Erickson of $60,000, and we had to pay 40 per cent of that gain for to borrow enough. You can see how ridiculous that was. Here we have $60,000 guaranteed by ten notes. At that time it was a personal proposition of ours that guaranteed $60,000, and it was guaranteed that if we had a loss—instead of $60,000 we could not have realized $6,000 out of it if there would have been a loss. And, Mr. Payne, we took about 40 per cent of that profit to West Coast Construction Company.

Q. Mr. Johnson, do you know how much money —what the amount of the profits credited to the children were in 1942 on their so called stated investments?

A. I don't remember for sure how much that

(Testimony of George Johnson.)

was, but it was a fairly good sized amount. It was several times more than I expected, in fact much more than I expected.

Q. Three or four times as much as their stated capital accounts?

A. Yes, I would not be surprised but what it would be. I don't remember now for sure how much it was, but it was beyond my [182] expectations.

Q. That was almost as big as the Erickson deal, wasn't it?

A. Well, yes, but we got some good out of it, didn't we?

Q. Who did? A. Well, the group.

Q. The family, you mean?

A. It didn't go out of our family.

Q. I see. That is the thing that you were working for, isn't it?

A. You know, I raised those children, and I looked forward to a day when I could lead them into a good business, and I still wish every one of them good luck. If I can give them good advice, I will do that right today even.

Q. Now, let me ask you one other thing——

A. (Interposing): You would do the same thing, wouldn't you?

Q. Did you discuss this among yourselves, or did someone advise you on this matter how to go about this?

A. Oh, after we come to think of it, that we possibly could maneuver and raise $60,000, we talked

(Testimony of George Johnson.)

this over with our attorney and wondered how that could be done.

Q. You didn't raise $60,000, however, did you?

A. We raised an asset to $60,000.

Q. What did you do with the notes, Mr. Johnson? [183]

A. Well, the notes are right there.

Q. Well, that is not cash.

A. No, but I say that it was an asset.

Q. Well, what did you do with the notes. Put them in your vault?

A. Well, naturally we would put them in the vault.

Q. You did not pledge them with the bank, did you? A. We surely did.

Q. When?

A. Well, I think you will find that——

Q. (Interposing): I am asking you now. You say that you did. I want you to get the information for me right now.

A. I know that we pledged them with the bonding company.

Q. With what?

A. With the bonding company.

Q. But you don't know about pledging them to a bank?

A. I am not sure, but I think that the bank knew about it.

Q. But the notes weren't cash, were they? You could not spend the notes, and you didn't spend the notes?

(Testimony of George Johnson.)

A. Yes, but here—well, it is an asset that credit supports.

Q. The notes were not paid up until 1945, were they, Mr. Johnson? They were not paid up to 1945, were they?

A. The notes, I do not think that they were all paid up to 1945. [184]

Q. Do you think any of them were?

A. Yes, I think some of them are being paid now.

Q. Which ones?

A. I think that you can also find that out from the bookkeeper.

Q. You are in a position to know about notes. These notes came to you personally. No one else would have the same knowledge as you would have about them. Sometimes we do not get the information if we ask a man who does not have the right to know. But here you are in a position to know. Now, did Lloyd pay you his note?

A. I think so.

Q. When? A. Oh, quite a long time ago.

Q. When? 1946 or 1947?

A. I don't know exactly what date that was.

Q. You don't know?

A. I don't know for sure what date it was now.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.)

Mr. Potts: I will call Mr. Albin Johnson.

Whereupon,

ALBIN JOHNSON

called as a witness for and on behalf of the Petitioners, [185] having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. State your full name.

A. Albin Johnson.

Q. Where do you reside, Mr. Johnson?

A. At 1061 East 88th Street, Seattle.

Q. Can you talk a little louder?

A. Yes. At 1061 East 88th Street.

Q. How long have you been a resident of King County, State of Washington?

A. Oh, since 1911.

Q. And where had you lived before that?

A. I came direct from Sweden to Seattle.

Q. And how old were you when you came here from Sweden? A. 18 years old.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. Where were you naturalized?

A. In Seattle.

Q. In this district? A. Yes.

Q. Now, when you came here from Sweden what kind of [186] work did you do here?

A. I started with my brothers as a carpenter.

Q. What brothers were those?

A. That was George and John.

(Testimony of Albin Johnson.)

Q. Did you become a partner with them?

A. Well, I worked for them for many years as superintendent, until about 1925.

Q. And what did you do then?

A. Then I went in and built—done some building with my brother, Carl Johnson.

Q. Another brother? A. Yes, sir.

Q. And not involved in this particular matter?

A. No, not involved in this particular matter. I did that until 1934, and then I went in business with George and John.

Q. Is that the partnership spoken of here in 1934 of George and John? A. That is it.

Q. And what work did you do after that?

A. Then we went down to Coulee Dam and built those bridge piers.

Q. What happened to that job?

A. Well, we lost a lot of money on that job. I lost all the money that I made before. [187]

Q. After Coulee Dam—after that job was through, what did your partnership do?

A. Well, after we were through down at Coulee Dam, we went in as a corporation, or organized as a corporation, because we were so badly bent down at Coulee Dam. So we had to.

Q. Was that the corporation that has been testified to here by George and John Johnson?

A. That is it.

Q. After that corporation was dissolved, what work did you do in the partnership?

A. We started in 1940—we started the West

(Testimony of Albin Johnson.)

Park Project in Bremerton under the partnership.

Q. Now, you have heard John Johnson and George Johnson testify before you here?

A. Yes.

Q. Did you have any negotiations regarding Philip Johnson or Mr. Phillips or Mr. Granston?

A. Well, I was not together with them when they went over and saw Mr. Granston, but we talked about it.

Q. You weren't with them?

A. No. And Phil Johnson, when he was in our office, I overheard that conversation.

Q. Can you give us about what time that took place?

A. Well, it was before we went into—before we got [188] the West Park Project job. I am quite sure it was. It was during that time that we wanted to branch out and get bigger contracts, and in order to do that we needed some money.

Q. Well, did you succeed in getting any outside money or credit?

A. Then we asked Clyde Phillips. Of course he would have gone in with us, as has been testified to, but he wanted such a big percentage, so that could not be done. So he got our brother-in-law to go together with us.

Q. That was Mr. Erickson?

A. That was Mr. Erickson, in order to get the bond.

Q. And you were able to get the bond by getting him in, is that right?

(Testimony of Albin Johnson.)

A. Yes, sir. Of course, I don't know how he got that bond.

Q. Is this correct, Mr. Phillips got the bond, Mr. Phillips who got Mr. Erickson to go in with you. Mr. Phillips got the bond for you?

A. Yes, sir, Clyde Phillips.

Q. He was an insurance man that wrote bonds for contractors.

A. Yes. He was a bondsman.

Q. And now, what was the reason, Albin, for starting that limited partnership which was begun in 1942 by the general partners, and taking into the partnership some of your [189] children?

A. Well, the reason was because of the expense that we had before. If we had had those limited partners when we went down to Coulee Dam, the bonding company would not have had to finish up the job for us. They really had to come down there and help us to finish up the job. If we had had backing like that, and we had talked it over to get some money to swell our assets, why we would be getting along better. And we tried to get money from other sources, but we did not seem to have any luck.

Q. All right. What children did you take into the limited partnership—the first one I am referring to—organized in 1942?

A. I took in Elsie, my daughter.

Q. Was she married?

A. Yes, she was married.

(Testimony of Albin Johnson.)

Q. What was her name—her married name?

A. Keil.

Q. Elsie Keil? A. Yes.

Q. What was her husband's occupation?

A. He was a painter.

Q. A house painter? A. Yes.

Q. And did they own any property? [190]

A. No, I don't think so at that time.

Q. Was he employed? A. Oh, yes.

Q. How old was Elsie?

A. At that time she must have been about 25 or 26.

Q. And how old was her husband?

A. I cannot tell you that.

Q. Was he older or younger?

A. He must be a couple of years older.

Q. All right. Now, who besides Elsie did you take in? A. Winston Johnson.

Q. And what was Winston's age?

A. He was about 24 at that time.

Q. What was his education?

A. Engineer. He had gone three years in the University of Washington here in Seattle.

Q. You say three years? A. Yes, sir.

Q. He did not graduate from the University, did he? A. No.

Q. What was the reason for that?

A. He had to go into the Army, you see.

Q. What branch of the Army did he go into?

A. It was the Army—it was with the Army Engineers.

(Testimony of Albin Johnson.)

Q. With the Army Engineers? [191]

A. Yes, sir.

Q. How long was he in the Army, do you know?

A. Oh, it was only a short while. Either two or three months, or whatever it was.

Q. And what was the reason that he was sepaated from the Service?

A. He got eczema from wearing woolen socks and he could not get rid of that.

Q. So he was discharged from the Service?

A. Yes, sir.

Q. When did he get back here, approximately?

A. It was the first part of 1943. I am not so sure on that.

Q. Was it 1942 or 1943?

A. The last part of 1942.

Q. Did he join your organization—the limited partnership—when he returned.

A. Oh, yes—sure.

Q. How long did he stay with you?

A. He has been staying with us all the time.

Q. And now, as to Winston—let me see. Were those the two that were members of the partnership in 1942? A. Yes.

Q. How did they acquire their interest in the partnership—how did Elsie and Winston acquire their interest in [192] the partnership?

A. I loaned them the money, and they gave me a note for it.

Mr. Payne: I didn't get that answer.

(Testimony of Albin Johnson.)

The Court: Read the answer, Mr. Reporter.

(Last answer read.)

Mr. Potts: I will have this marked for identification.

(Document above referred to marked Petitioners' Exhibit 9 for identification.)

Q. (By Mr. Potts): Showing you the originals and these photostat copies which are marked as an exhibit, Mr. Johnson, I will ask you to tell the Court what this exhibit is, this exhibit marked for identification as Petitioners' Exhibit 9.

A. Those are the two notes that I received for the money that I loaned them.

Q. Will you tell the Court the date of these notes?

A. It is April 21, 1942, $10,000 at 4 per cent interest.

Q. For how long does it run?

A. Two years.

Q. And is this other note here the same.

A. Yes, the same thing is in the other note.

Mr. Potts: We will offer in evidence, if Your Honor [193] please, Exhibit No. 9 marked for identification.

Mr. Payne: No objection.

The Court: Petitioners' Exhibit 9 for identification will be received in evidence.

(Document heretofore marked Petitioners' Exhibit 9 for identification received in evidence.)

(Testimony of Albin Johnson.)

Q. (By Mr. Potts): Now, when the second partnership was formed in the next year—in 1943—were any additional children of yours taken into that partnership? A. Yes.

Q. Who was that?

A. Vedola Johnson.

Q. What is her age?

A. 21—I mean at that time.

Q. Was that her age at that time?

A. Yes, that was her age at that time, 21.

Q. Was she married at the time?

A. No, not at the time.

Q. By the way, were there any other of these limited partners that were unmarried except Vedola?

A. Yes. Winston was unmarried—well, I believe Winston was married.

Q. Just Winston and Vedola were the only ones, is that [194] correct, that were unmarried?

A. That is right. Winston and Vedola were not married.

Mr. Potts: Mark this for identification if you will, please, Madam Clerk.

(Document above referred to marked Petitioners' Exhibit 10 for identification.)

Q. (By Mr. Potts): How did Vedola secure her interest in the partnership in the next year, June 30, 1943?

A. The other children turned in their notes and

(Testimony of Albin Johnson.)

divided their interest in the company with Vedola, and they gave new notes.

Q. Now, Vedola, you say was not marired?

A. That is right.

Q. I will ask you whether or not she was engaged at that time.

A. Yes, she was engaged.

Q. And can you tell us when she was married, if she was married?

A. In January of 1943 she was married.

Q. In January of 1943? A. Yes, sir.

Q. Do you mean 1943?

A. Yes, I am quite sure of that. [195]

Q. Showing you the original notes——

A. (Interposing): No. In 1944 she was married.

Q. You wish to change that to 1944?

A. Yes, 1944.

Q. All right. Now, showing you Petitioners' Exhibit 10 marked for identification, will you tell the Court what those are?

A. Those are the renewed notes that they made then for $6,666.66 apiece.

Q. And they are signed by whom?

A. By Vedola Johnson, Winston Johnson and Elsie Keil.

Q. And what is the term of those notes?

A. Two years.

Q. Is interest provided there? A. Yes.

Q. How much interest?

A. 4 per cent per annum interest.

(Testimony of Albin Johnson.)

Mr. Potts: We offer then in evidence Petitioners' Exhibit 10, if the Court please.

Mr. Payne: No objection.

The Court: That will be received as Petitioners' Exhibit 10.

(Document heretofore marked Petitioners' Exhibit 10 for identification received in evidence.) [196]

Q. (By Mr. Potts): In bringing in your children as partners, and in lending them the money on these notes, what conversations did you have with them regarding the payment of the notes?

A. Well, that they would have to pay the notes; that they would be responsible for the notes.

Q. Was there anything said about the fact that if the company lost money they would not have to pay the notes?

A. No, there was nothing said on that.

Q. Was there any restriction of any kind placed upon the limited partners in drawing out any earnings they might have? A. No.

Q. On account of their investment in the Western Construction Company?

A. No. There was no restriction on them. They could draw as they choosed. Some of them drew more and some of them drew less.

Q. In your case, do you know whether any of your children drew any substantial amounts?

A. Oh, yes.

(Testimony of Albin Johnson.)

Mr. Potts: I will have this marked for identification.

(Document above referred to marked Petitioners' Exhibit 11 for identification.) [197]

Q. (By Mr. Potts): Showing you this exhibit which is a copy of this book (indicating) will you tell the Court what that exhibit represents?

A. That is the money that they got invested in the company.

Q. Well, what is that? Tell the Court what that is—that exhibit.

A. It is a deposit slip from the bank.

Q. And for whose account?

A. For Winston and Elsie Keil.

Q. No, no. Whose account, who is credited there?

A. The Western Construction Company.

Q. And what are the two items there?

A. Winston Johnson, $10,000, and Elsie Keil, $10,000, or a total of $20,000.

Q. And the date of this slip?

A. May 7, 1942.

Mr. Potts: We offer, if the Court please, Petitioners' Exhibit 11 in evidence.

Mr. Payne: No objection.

The Court: Petitioners' Exhibit 11 will be admitted in evidence.

(Document heretofore marked Petitioners' Exhibit 11 for identification, received in evidence.) [198]

(Testimony of Albin Johnson.)

Q. (By Mr. Potts): Just to hurry your testimony along as much as possible, I am going to ask you what happened to you and Winston's, Vedola's and Elsie's interests in the Western Company—in the limited partnership.

A. As the Western Construction Company the last couple of years have not done very much work, we organized a new company, which we call the Glacier Construction Company, and I took the children in as a partner in that company.

Q. That is a partnership?

A. No, that is a corporation.

Q. And now, what interest did Winston, Elsie and Vedola have in the corporation, the Glacier Construction Company?

Mr. Payne: I should like to object to that. I do not think it has any material bearing in this case. It is after our taxable period, and it is after an investigation has been made by the Bureau of Internal Revenue. The position has been taken that the partnership itself was subject to tax, and I do not think that this is pertinent to any issue before the Court at this time.

The Court: What is the purpose of this, Mr. Potts?

Mr. Potts: The Petitioner would like to show, if the Court please, that Albin Johnson and the limited partners of his took the same interest that they had in Western [199] Construction Company and invested it in this corporation.

(Testimony of Albin Johnson.)

The Court: You mean that they withdrew from the Western Construction Company?

Mr. Potts: Yes, in 1947. And that they withdrew all of their earnings from there and invested it in the cash capital of this corporation.

The Court: And that they are no longer members of the Western Construction Company?

Mr. Potts: That is right.

The Court: Well, I will overrule the objection.

Q. (By Mr. Potts): Will you answer the question, Mr. Johnson? What became of you and your limited partners' interest in the Western Construction Company?

A .We transferred it over to the Glacier Construction Company, Incorporated.

Q. Now, with respect to the financial interest of Winston, Elsie and Vedola in Western Construction Company, a limited partnership, what became of that money?

A. It was—they bought stock with it in the Glacier Construction Company.

Q. In their own names?

A. In their own names.

Mr. Potts: I have here the stock book, if the Court please, and I would like to show it to Counsel, if I might. [200] Mr. Payne, do you want to look at these articles? If the Court please I should like to read into the record from the articles of incorporation of the Glacier Construction Company, Article 5, relating to the capital stock.

(Testimony of Albin Johnson.)

The Court: You may do that.

Mr. Potts: Article 5 of the articles of incorporation of the Glacier Construction Company, Incorporated, a Washington corporation, approved and filed in the office of the Secretary of State on March 7, 1947, provides as follows:

"The capital stock of this corporation shall consist of 125,000 shares of common capital stock, at $1.00 par value per share."

And then I should like to read into the record from the stock certificate book the stubs, 1 to 5 inclusive.

The Court: You may do so.

Mr. Potts: No. 1, for 10,000 shares, issued to Albin Johnson, March 12, 1947; No. 2, for 10,000 shares, issued to Rose Johnson, March 12, 1947;

No. 3 for 38,000 shares, issued to Winston Johnson, March 12, 1947;

No. 4, for 48,000 shares issued to Elsie J. Keil, March 12, 1947;

No. 5, for 9,000 shares, issued to Vedola J. Kent, dated March 12, 1947. [201]

Q. (By Mr. Potts): What was the reason for forming this corporation, Mr. Johnson?

A. Oh, to get—to do some work, and we wanted to get going and do some construction work again.

Q. Was the Western Construction Company, a co-partnership, doing any amount of construction work? A. No.

Q. Were you going to do the same kind of construction work in the corporation, the Glacier Con-

(Testimony of Albin Johnson.)

struction Company, as you did in the Western Construction Company?

A. That is it—the same thing—as we did before.

Q. The same type of work?

A. The same type of work—yes.

Q. And the same kind and size of buildings, and so forth?

A. Oh, that is hard to say. We thought first we were going to build a few houses, and then we may just go ahead and build some small houses to see how they will turn out.

Q. And now, those shares that I have read to you—was cash paid for those shares?

A. Yes.

Q. If you know, did Vedola, Elsie and Winston get the money—where, if you know, did they get the money to pay cash for their shares? [202]

A. Yes, they got the money to pay cash for their shares.

Q. Where?

A. They got it from the earnings that they earned from the money that they invested with the Western Construction Company.

Q. Can you tell the Court whether or not the certificates of those shares are in their possession?

A. Yes.

Q. How long did Winston work for the Western Construction Company?

A. Well, he worked—of course he worked for me before——

Q. (Interposing): I mean from the time that

(Testimony of Albin Johnson.)

he got out of the army, how long did he work for the Western Construction Company?

A. He worked down at Coulee Dam when we were there. He worked all the time when I went together with the other brothers since 1934. He has worked with me since then. During school vacations——

Q. (Interposing): He worked as a youngster for you? A. Yes, sir.

Q. I mean, when he separated from the Army and came to work as a limited partner, how long did he work?

A. He worked for the Western Construction Company all the time. [203]

Q. What kind of work did he do?

A. Well, he was estimating, and also supervising the work, like we had several jobs, and he really took care of them. He estimated them and took care of them, like the barracks for the Houghton job in Kirkland. And then at Pier 91 we had a couple of jobs down there that he supervised.

Q. Pier 91 in Seattle?

A. Yes. And the Service Flight Building in Renton, at the airport there. And the Gunnery Revetment.

Q. The Gunnery Revetment, you say?

A. Yes, sir. That was built for to shoot in the guns from the airplanes, you know, around the field there, you see.

Mr. Potts: Your witness.

(Testimony of Albin Johnson.)

Cross-Examination

By Mr. Payne:

Q. Mr. Johnson, you said that you lost a lot of money on the Coulee Dam job.

A. I surely did.

Q. How much did the partnership lose on that, do you know?

A. Oh, I don't know exactly of course now. Approximately around $100,000 I think it was.

Q. That was in 1935?

A. Yes. We started in 1934 and we finished the job in 1935. [204]

Q. What was the status of the partnership in 1935 and 1936—was it at a very low ebb?

A. Yes, we were pretty low after we got through there.

Q. You were not able to pay your obligations at that time, were you?

A. No, but we got some small jobs, and we finally got so that we began to pay off.

Q. Was the partnership itself insolvent at that time, do you know? A. What do you mean?

Q. Were your debts more than your assets at the Coulee Dam job?

A. Yes, I believe—I believe that if they would have gotten after us then they sure would really have broke us. I had some houses that I had put up as pledges, and my brothers had their homes which they had to put us as pledges, and that was

(Testimony of Albin Johnson.)

the only thing that we got credit on so that we could keep going.

Q. Mr. Johnson, you said that you took the children into the 1942 partnership in order to get additional assets, is that what you said?

A. That is it.

Q. What additional assets did you get?

A. Well, we got $20,000 more in notes.

Q. In notes? [205] A. Yes, sir.

Q. Did you give the children $20,000?

A. I didn't give it to them. I loaned it to them.

Q. You gave them checks for that amount of money? A. Yes. I loaned it to them.

Q. With the understanding that they would put it back into the Western Construction Company?

A. That they put it back—yes.

Q. And they did do that at your request?

A. That is it.

Q. And you were no richer or no poorer after that, were you?

A. Well, we had that much more credit. If we had that when we were down at Coulee Dam, we would have been okay.

Q. You mean the Western Construction Company had the credit, or you individually had the credit?

A. Well, I had the credit, and that is the same thing as the Western Construction Company, because when we signed for any bonds, we had to sign as individuals.

(Testimony of Albin Johnson.)

Q. And you used your own individual resources to finance the partnership?

A. Sure. That is the only money that we had.

Q. Outside of the stated capital in the partnership? A. Yes, sir.

Q. Do you know how much money you had in the partnership [206] as stated in the new agreement of 1942?

A. I cannot recollect the figures, no, but that would be——

Q. (Interposing): About $15,000, would it be?

A. The books would show that. I must have had more than $15,000.

Q. What makes you think that?

A. Well, if I loaned $20,000, I must have had more than $15,000. I had to have more—I could not loan away something that I didn't have.

Q. Would you say that you individually used personal assets in the business of the partnership after the signing of that first partnership agreement in 1942, in excess of $15,000?

A. Yes, sir.

Q. How much in excess of that would you say it was?

A. I don't know, but of course the books will show that. Of course I cannot recollect the figures.

Q. This deposit slip in evidence shows Winston Johnson $10,000, and Elsie Johnson $10,000. Is that money which they paid into the Western Construction Company at your request?

(Testimony of Albin Johnson.)

A. Yes. That is the money that they loaned from me, you see.

The Court: That you loaned to them? [207]

A. That I loaned to them, yes.

Q. (By Mr. Potts): And they paid that back into the partnership?

A. They paid that back into the partnership and they gave me a note for it.

Q. Have those notes ever been paid to you?

A. Yes, they have been paid now.

Q. When?

A. Oh, I think about a year ago, or maybe a year and a half ago.

Q. Was it in 1947 or in 1946?

A. In 1947 I think it was.

Q. What was Mrs. Keil's husband doing during 1942? A. He was a painter.

Q. He was a painter? A. Yes, sir.

Q. They had no property, did they?

A. No, I don't think so. I don't know.

Q. Do you know whether Elsie talked to her husband before she signed the note?

A. Oh, I am sure that she did.

Q. You don't know whether she did or not?

A. I am sure that she talked to him about it, yes.

Q. You said Vedola's husband—Mr. Kent—came back in 1942 and worked for the partnership—he came back from [208] the Army and worked for the partnership, is that right?

A. No, he never worked for the partnership.

Q. He never worked for the partnership?

(Testimony of Albin Johnson.)

A. No, he did not.

Q. I understood that he did.

A. Ellingson came back and worked for the partnership.

Q. Ellingson? A. Yes, sir.

Q. Is Mrs. Ellingson your daughter?

A. No. That is George's daughter.

Q. What kind of work did he do?

A. Carpenter work.

Q. And you paid him the same as any other employee?

A. I don't know how much he was paid, but I know that he was paid carpenter's wages anyway. And he was doing some supervising also. I do not know whether we paid him any more for that or not. I don't know about that.

Q. Now, in 1943 when Vedola came into the partnership, did you have a discussion among you about her interest? A. Yes.

Q. Did you tell the children what they ought to do? A. Well——

Q. (Interposing): Did you tell Winston and Elsie that they should transfer a part of their interests to Vedola?

A. Well, Vedola came of age, and I think it was more or [209] less agreed between themselves about that.

Q. You said that you told the children that they would have to pay the notes if anything happened so that it turned out bad, is that right?

(Testimony of Albin Johnson.)

A. Yes.

Q. You told them that before they signed the notes, did you? A. Oh, yes.

Q. You didn't expect that it would turn out that way, did you—that it would turn out bad?

A. Well, you can never tell, because contracting is the biggest gamble you ever undertook. Some of those jobs, like Holly Park, after we got going there, they froze the lumber for us, and they froze the nails. The government froze the lumber and froze the nails, and even though we had a government contract we could not buy lumber or nails, and we had a gang of 300 or 400 carpenters going, and we had to kind of lay them off—we had to lay them off. And we got into winter months where we got into mud and slush, and one thing or another. That job could have run away from us, and we could have lost all kinds of money.

Q. Do you remember when you took the Rainier Vista government contract? A. Yes, sir.

Q. What month was that? [210]

A. That was in 1942.

Q. What time?

A. I am pretty sure that we started that in the first part of August, 1942.

Q. Now, let me see, you finished the West Park contract late in 1941, didn't you? A. Yes, sir.

Q. Then what did you do after that?

A. I don't remember what job we had after that. I think that we had some warehouse that we worked on.

(Testimony of Albin Johnson.)

Q. You cannot remember the dates when you started those jobs?

A. The Alaska stock pile job, we started that, and then we started with the Rainier Vista, and that was in August of 1941 that we started on the Rainier Vista. I am not so sure on those dates. But those could be looked up if you want a record of them.

Q. Mr. Johnson, you did have some substantial partnership work in process at the time that this partnership was formed, in 1942, didn't you?

A. Yes.

Q. And you had a lot of equipment and had men working, and things were active at that time?

A. Well, we didn't have very much equipment. We rented most of the equipment. [211]

Q. I see.

A. We didn't have enough money to buy the equipment. If we could have done that,—we could have bought the equipment, we could have made some real money.

Q. But your West Park project had been very successful, hadn't it?

A. Well, it could have been awfully bad, too. If you could have seen what we had to go through there, you would realize that it could have been awfully bad, too. We have a movie picture. I wish I could show you that movie picture, where mud is up to knee high, and we had to drag that lumber through that mud, and when we dragged it through that mud, you should have seen the carpenters, how

(Testimony of Albin Johnson.)

they tried to handle that lumber. And there were lots of them that quit on account of that and went home.

Q. But you made money in spite of that?

A. Well, we got an addition to it, and we got nice weather, and when we got the nice weather we could get in with materials and equipment. We were actually losing money there in the beginning. Mind you, the lumber cost us $58.00 a thousand, place lumber, when we first started in there.

Q. And this loan that you made to your children, you expected to do them a great favor by it, didn't you?

A. It might have turned out to be a lemon, too.

Q. What did you intend to do by it? Did you intend to [212] do them a great favor by it?

A. I was intending to get them into the construction business. My boy had been working with me since he had been able to carry a water bucket. When I started in, we didn't have any office, and my girl was doing all the typing and all that stuff in the evenings, because in the daytime I was on the job.

Q. But you did not expect the girls to go to work in the partnership, did you?

A. Yes. She could have worked for us.

Q. Well, Elsie was married in 1942, wasn't she?

A. Yes, but she could have worked for us.

Q. Did she have a child?

A. She had a child, yes.

Q. You didn't expect her to work for the part-

(Testimony of Albin Johnson.)

nership, did you? A. Well, she surely could.

Q. I don't hear you.

A. Well, she surely could if she wanted to.

Q. But you didn't expect her to?

A. Well, if we really needed her, why she would have come to work. Like in the organization we have now, I expect to have my wife come down and work in the office when we get started in this new corporation.

Q. Did you ask Elsie to work in the [213] partnership?

A. Well, if we really needed her we would.

Q. I didn't ask you that. I asked you, did you ask Elsie to work in the partnership?

A. I don't know whether I asked her or not. I know that if we really needed her and asked her to come, why she would come.

Q. You never asked any of the other girls either, did you, in 1942 or later?

A. We had lots of girls that worked up there in the office and, sure, Elsie, before she was married, she was working for the Western Construction Company, and she was working down at Coulee Dam, and was working with me down there.

Q. But you never expected the girls to work in construction work with you, did you?

A. Yes, I did, and they are liable to come to work for me now, too.

Q. Well, you never asked any one of them to come and work for you during 1942, 1943, 1944 and 1945, did you?

(Testimony of Albin Johnson.)

A. Oh, I don't remember how that was. I think I asked Vedola to come to work. I don't remember what it was now. She was going to some kind of a business school, or whatever it was, so she didn't come at that time, but we need stenographers, and we needed people to work for us.

Q. You said that the children drew substantial sums [214] from the partnership? A. Yes.

Q. Do you know what they used those sums for?

A. No, I don't know what they used them for.

Q. You think that most of it was used to pay their federal taxes, do you?

A. No. Some of us paid for that. Maybe to buy groceries, and buy clothes, and one thing or another.

Q. You are just assuming that, aren't you?

A. I know that they did buy those things.

Q. Do you know that they got any more than their tax money in 1942?

A. Yes, they got more than their tax money in 1942.

Q. How much more?

A. I don't know whether it was 1942, but it was later on, I know, that they drew all kinds of different amounts. I don't know how much. The record will show that, how much money they drew, but they don't draw just for tax money purposes.

Q. How did it happen, when you came to form the corporation in 1947, that you took only 10,000 shares?

A. I don't know really how that happened. I will tell you, I would like to get the children started

(Testimony of Albin Johnson.)

in this business, and get my son at the head of it, because in four or five years from now I would like to see them be going in [215] good shape so that I just can leave it to them and let them have it.

Q. Do you remember how much Elsie had in the new corporation—how many shares?

A. I have forgotten now. It was just read here.

Q. 48,000 shares, wasn't it? A. Yes, sir.

Q. How do you explain that she got 48,000 shares and you only took 10,000? What was the reason for that?

A. There was no reason at all. I can buy in any time that I want to—I can put some more money in it if I want to. There was absolutely no reason for it at all.

Q. How does it happen that she has more stock than Winston? Do you know the reason for that?

A. That is according to the earnings.

Q. How is that?

A. That is according to the earnings, or the investment, I guess. The books will also show how that happened.

Q. But when you formed the corporation you just took yourself and your three children out of the partnership and went in business as the Albin Johnson family? A. And my wife.

Q. And your wife? A. Yes, sir.

Q. Now, you have said that Winston was an estimator? [216] What is an estimator?

A. An estimator takes the quantities off of the plans.

(Testimony of Albin Johnson.)

Q. Would he estimate a job like the Rainier Vista job? A. Yes, sir.

Q. Would you take his judgment on that in signing a contract for a million dollars?

A. Yes, I would.

Q. Did he do that?

A. He was in the Army at that time when we figured Holly Park, but he figured lots of jobs—estimated lots of jobs, and naturally going back——

Q. (Interposing): Beginning when—beginning what year?

A. Oh, he had been working a long time with us.

Q. He was just doing office work in 1942, wasn't he?

A. He was doing office work in 1942, yes, but also he was working as a foreman on one job.

Q. What kind of a foreman?

A. Carpenter foreman. He worked as a carpenter foreman in Rainier Vista.

Q. In 1942?

A. Until he was called into the Army.

Q. In 1942?

A. No. That was in 1941. I am sure that we started Rainier Vista in 1941—in the Fall. [217]

Q. Did you pay him a little extra as a carpenter foreman, or was he just being paid as a carpenter then?

A. I don't remember what he was paid, but then when he came back from the Army he came into the office and started estimating. That was his education, and being with me all the time, and showing

(Testimony of Albin Johnson.)

him how to estimate it, and how we took it off and one thing or another, why naturally—well, he is educated, having gone to school, and he is good on figures and he can read the plans, having got that education in school and also by experience working with me.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.)

Whereupon,

LLOYD W. JOHNSON

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. State your full name.

A. Lloyd W. Johnson.

Q. Where do you reside, Mr. Johnson?

A. 5515 Penrith Road, Seattle.

Q. Mr. Johnson, how long have you lived in Seattle? [218] A. All my life, since 1910.

Q. You are, aren't you, the son of George Johnson? A. Yes, sir.

Q. Who has preceded you on the stand?

A. Yes, sir.

Q. Lloyd, what has your education been?

A. I was educated as a civil engineer at the University of Washington.

(Testimony of Lloyd W. Johnson.)

Q. Before you went to the University of Washington had you engaged in any of the construction business—I mean, had you worked any in the construction business?

A. I have worked in the construction business all my life, ever since I was old enough to carry a water pail.

Q. What was your first job?

A. My first job was that of water boy at the Shafer Building.

Q. That is the building at the corner of Sixth and Pine here in Seattle? A. Yes, sir.

Q. And did you continue on from that early age until you went to the University—did you continue on in the construction business?

A. Yes. I worked every summer and during the holidays and vacations on different jobs that the Western Construction Company had. [219]

Q. Now, Mr. Johnson,—now, Lloyd, directing your attention to what has been testified to here as the Coulee Dam job, did you have anything to do with that job?

A. Yes. I worked on that job from the time it started until I got sick.

Q. You had some ill health then about the time that the Coulee Dam job finished, did you not?

A. Yes. I got T.B. over at Coulee Dam and I had to be in a hospital for a year.

Q. After you got out of the hospital—after this Coulee Dam job—did you continue on in the construction business? A. Yes, I did.

(Testimony of Lloyd W. Johnson.)

Q. What kind of work did you do, and who for?

A. I worked—right after I got well—that is, arrested you might say with this case of T.B., I did work for a short while in the King County Engineer's Office.

Q. That is here in Seattle?

A. That is here in Seattle.

Q. Yes.

A. And then after that through a connection at the University, I became acquainted with Max J. Kuney, of Spokane.

Q. When did you first become acquainted with Mr. Kuney—when you first became acquainted with him, what kind of work was he engaged in? [220]

A. He was engaged in building the dam.

Q. Where was that?

A. To correct some of the other testimony, it was Island Park, Idaho. It was right in there, in the crook of Montana. That is why they speak of it as Montana.

Q. Oh, I see. How long were you over there?

A. I was there approximately a year as assistant superintendent.

Q. And after that, Lloyd, where did you go?

A. I came back to work for the Western Construction Company.

Q. Doing what?

A. I worked out at the swimming pool, at the University. That is the addition to the men's athletic pavilion.

(Testimony of Lloyd W. Johnson.)

Q. At the University of Washington?

A. Correct.

Q. Directing your attention to the year 1941, did you become associated with Mr. Kuney again in that year?

A. Yes, I did. I became associated with Mr. Kuney—although I hadn't worked for him since 1937, he had remained a personal friend of mine, and he had spoken several times on visits to Seattle that perhaps we should go into some kind of a deal and bid on a few jobs. We did on a few jobs, and we were unsuccessful. And finally we bid on a job in the [221] Navy Yard at Bremerton. That job at the Navy Yard started out as a $142,000 contract, and in 1941 we were just in the middle of the job when Pearl Harbor was attacked—when the attack on Pearl Harbor took place—and the Navy evidently was satisfied with our work, and they negotiated several jobs in that immediate vicinity with us.

Q. By "negotiated," you mean that you did not bid on them?

A. We did not bid on that particular batch of work.

Q. Now, with respect to the limited partnership of the Western Construction Company begun in 1942, what was your connection with the limited partnership—that is, how did you happen to go into it, will you tell the Court?

A. Well, this was discussed with my father, about the forming of this limited partnership, and we discussed how we could borrow the money from

(Testimony of Lloyd W. Johnson.)

him and sign a note, and we would then be limited partners in the Western Construction Company.

Q. Now, at that time, as I understand your testimony, you already had this first job with Kuney pretty well completed, is that correct?

A. Yes, we did.

Q. And had you made money on that job?

A. Yes, we had.

Q. With respect to this note of $10,000, had you made [222] that?

A. Yes, and considerably more than that.

Q. And did you understand from any conversation with your father that this note was not under circumstances to be paid?

A. No, there was never any discussion about anything like that. We signed notes, and we sign notes in our Kuney-Johnson business large sums of money, and we know what we have to do when we sign a note.

Q. Now, at that time did you or did you not have an interest in the estate—in an estate being probated here in King County?

A. Yes. I have had that interest all the time.

Q. And would you tell the Court whose estate it is?

A. It was the estate of my mother, who died in 1920.

Q. Do you know whether, or can you tell us whether in those conversations with your father, and leading up to the formation of this limited partnership, there was anything about your being actively engaged in the limited partnership?

(Testimony of Lloyd W. Johnson.)

A. Well, during the time that I was with Kuney we were, of course, bidding on jobs all the time—we were bidding on several jobs a week, you might say, and sometimes we would bid on one, and sometimes we might bid on two. We were doing quite a bit of work, and we were aware of the costs and the increase in the cost of building. And I [223] was aware at all times that I had this interest in the Western Construction Company, and at all times when jobs were being prepared to bid upon, I was called in for any kind of consultation or advice, and whenever there was any need for any kind of consultation or advice, why I was there.

Q. Well, I didn't mean that, Lloyd. I will get to that later. Let me put it this way. In your discussions with your father about the formation of the limited partnership, can you tell us whether or not there was anything in the discussions relative to your returning and giving full time to the Western Construction Company?

A. Well, yes, there were discussions about my returning. There has always been discussions about that. Ever since I was 5 years old it seems like I heard how Roy, I and Winston were going to take over the Western Construction Company.

Q. Now, Mr. Kuney was not a graduate engineer, was he? A. No.

Q. And as I understand from former testimony on the stand, neither had he been engaged in general construction—that is, in building?

(Testimony of Lloyd W. Johnson.)

A. No, that is correct.

Q. In the erection of large buildings, bridges, and so forth? A. That is correct. [224]

Q. What had been his work?

A. His principal work had been dirt work—dirt moving.

Q. I will ask you whether or not Kuney was a man of some means?

A. Yes, of considerable means.

Q. So that your position with him at that time was rather an enviable one? A. I think so.

Q. What was your age at that time, Lloyd—in 1941? A. 31 years old.

Q. 31 years old? A. Yes, sir.

Q. Now, to go back to the other question that you gave us the answer on, you might detail what assistance you gave the Western Construction Company while you were with Kuney.

A. The assistance I gave them was in the final preparation of bids on large projects. It was not work that was done at 8 o'clock in the morning or at 12 o'clock at noon. It was done at any hour of the day, and in any place. There were not any particular hours concerning that work. It was just whenever—whenever they were going to get a job ready to bid on, why, if it was a large job, I would be consulted as to the prices and the present or the future prices of material. [225]

Q. Referring now to 1943 and the formation of what we call here the second limited partnership, will you tell the Court how that partnership came

(Testimony of Lloyd W. Johnson.)

about as far as your particular family was concerned? That is, there was a division of interest, was there not—a division of your own interest?

A. Yes, there was.

Q. In the Western Construction Company?

A. Yes. In the original limited partnership I had invested $10,000, and at a later date it was discussed that—or a later date why Rachel at that time was willing to take the risk in this investment, and so we discussed it among ourselves and we agreed that the way that we should do it was for me to reduce my investment to $5,000 and have her to increase hers to $5,000, or have her come in for $5,000.

Q. And how did you do that? I mean, physically. What were the mechanics of it?

A. Well, the mechanics of it were that we just took a note for $5,000 in place of the $10,000 note.

Q. Lloyd, the reason I asked you that is this, can you tell us whether you have the original $10,000 note? A. I don't know, until I look.

Q. We haven't been able to find it. Will you look tonight and see if you can locate it?

A. Yes, I will look. [226]

Q. Now, did you withdraw from the partnership any earnings—I am talking of the partnership in the Western Construction Company—any earnings as they accumulated? A. Surely.

Q. Can you give us any idea as to the amounts you may have withdrawn at any time? Just a minute, I think that we can assist you on that. We

(Testimony of Lloyd W. Johnson.)

have prepared, if the Court please, a schedule of the investments; the share of the profits and the withdrawals, supported by the checks, which I would like to have Counsel examine. First of all, I will have this marked for identification.

The Court: Mark that for identification Petitioners' Exhibit No. 12.

(Document above referred to marked Petitioners' Exhibit 12 for identification.)

Q. (By Mr. Potts): Showing you Petitioners' Exhibit 12 marked for identification, have you had occasion to go over that exhibit?

A. Yes, I have.

Q. Will you tell us what that exhibit is?

A. Well, this exhibit is a statement of my original investment; and my earnings and my withdrawals.

Q. And referring to the checks up here, can you tell us what those are?

A. These checks are the checks that have been issued [227] to me for withdrawals from the company.

Mr. Potts: We would like to offer Petitioners' Exhibit 12 in evidence, if the Court please.

Mr. Payne: That covers what years, Mr. Potts?

The Witness: It covers several years.

Mr. Potts: This covers 1942, 1943, 1944, 1945 and 1946.

Mr. Payne: We have no objection to anything up through 1945. We see no materiality to any withdrawals after that date.

(Testimony of Lloyd W. Johnson.)

The Court: Well, it has always been my ruling, where the Commissioner is contesting the validity of a partnership—it has always been my ruling that it is a very essential thing to show that the partnership was lived up to by actually distributing the profits of the partnership, not only in the years that are before us, but any subsequent years. The purpose of that is so that would show that it was not a mere sham, and I have always committed the withdrawals right up to the date of the hearing as showing the bona fides of the transaction. So I will overrule the objection, and it will be received as Petitioners' Exhibit 12.

(Document heretofore marked Petitioners' Exhibit 12 for identification received in evidence.)

PETITIONERS' EXHIBIT No. 12

Lloyd Johnson

Jan. 1, 1942, to Dec. 31, 1945

5-12-42	Investment	$10,000.00
12-31-42	Share of profits	35,615.92
6-30-43	6 mos. profits	17,919.80
6-30-43	Reduction on investment	5,000.00
12-31-43	6 mos. net profit	5,788.62
1-13-44	Return	3,600.00
12-31-44	Share of profit	2,075.25
12-31-45	Share net profit	5,693.74
		$75,693.33

(Testimony of Lloyd W. Johnson.)

Withdrawals		
3-13-43	Personal withdrawal	6,000.00
6-15-43	Personal withdrawal	6,500.00
9-13-43	Personal withdrawal	6,000.00
12-20-43	Personal withdrawal	7,500.00
4-10-44		350.00
5-16-44	Coll. of Int. Rev.....	399.50
5-16-44	Coll. of Int. Rev.....	4.00
5-16-44	Coll. of Int. Rev.....	400.91
5-16-44	Coll. of Int. Rev.....	4.01
9-13-44		350.00
1-11-45		350.00
3-19-45		3,000.00
6-15-45		850.00
7-25-45		2,000.00
		$33,708.42
Brought forward		$75,693.33
12-31-46	Share net profit	21.16
		$75,714.49
Withdrawals		
Withdrawals brought forward		$33,708.42
1-15-46		4,000.00
5-28-46		200.00
6-20-46		9,000.00
		$46,908.42

Admitted May 24, 1948.

The Court: It is now ten minutes after 6. We will [228] adjourn for the day to 9 o'clock tomorrow morning, May 25.

(Whereupon an adjournment was taken at 6:10 o'clock p.m., May 24, 1948, to 9 o'clock a.m., May 25, 1948.) [229]

May 25, 1948

The Court: You may now proceed, Mr. Potts.

Mr. Potts: Will you take the stand again, Lloyd?

Whereupon,

LLOYD W. JOHNSON

a witness called on behalf of the Petitioners, resumed the stand for further examination, having been previously sworn, and was examined and testified as follows:

Direct Examination
(Continued)

By Mr. Potts:

Before I proceed with the examination, if the Court please, with regard to Petitioners' Exhibit 12, we discovered that the checks for 1946, while listed on the exhibit, were not attached, and we found three checks, one in the sum of $9,000, and one in the sum of $200, and one in the sum of $4,000, which support the items set forth on page 2 of this schedule, which we would like at this time to have added—these three checks added to the checks on the exhibit.

Mr. Payne: No objection.

(Testimony of Lloyd W. Johnson.)

The Court: Very well. They will be added to the exhibit.

Mr. Potts: Also, at this time, if the Court please, we should like to have marked for identification and introduced into evidence the affidavits of publication of two certificates of the formation of the limited partnership. The first one I think should be 13, and the next one should be 14. [232]

The Court: They will be marked for identification as Petitioners' Exhibits 13 and 14.

(The documents above referred to, marked Petitioners' Exhibits 13 and 14, respectively, for identification.)

Mr. Payne: We have no objection if you want to put them in evidence.

Mr. Potts: All right. Then we will offer them in evidence.

The Court: All right. They are received as Petitioners' Exhibits 13 and 14.

(Documents previously marked Petitioners' Exhibits 13 and 14, respectively, for identification, received in evidence.)

Q. (By Mr. Potts): Lloyd, how did you come out in your adventure with Mr. Kuney—your business adventure, I mean?

A. I came out very well.

Q. And we will have a stipulation with Counsel for the Commissioner regarding your expenses with Kuney and Johnson, which were a part of this case,

(Testimony of Lloyd W. Johnson.)

because they were assessed on your tax return here.

A. Yes, I understand that.

Mr. Potts: That is correct, isn't it?

Mr. Payne: What is that? [233]

Mr. Potts: That we will have a stipulation regarding Mr. Lloyd Johnson's expenses.

Mr. Payne: You may have it right now if you wish it.

Mr. Potts: Will you dictate that into the record?

Mr. Payne: Yes, I shall be happy to do that. For purposes of the record, the parties are now willing to stipulate that in addition to the amounts of expenses allowed to Mr. Lloyd Johnson, which also affects the case of his wife, Roberta Johnson, he is entitled to additional allowances over those shown in the deficiency notices, of $1,200 for the year 1942; $1,200 for the year 1943; $1,200 for the year 1944, and $600 for the year 1945. And that all of the remaining amounts of such expenses disallowed in the deficiency notices are accepted as being properly disallowed.

Mr. Potts: Is that correct, Lloyd?

The Witness: Correct.

Mr. Potts: We will so stipulate.

The Court: Very well. That stipulation then is in the record as the agreement between the parties as to the matter stated.

Q. (By Mr. Potts): Now, showing you Exhibit 12, Lloyd, I think you have heretofore identified that as a statement of your investment in the part-

(Testimony of Lloyd W. Johnson.)

nership, your share of the profits and your withdrawals. [234] A. Yes, sir.

Q. Can you tell the Court approximately the amount of your withdrawals in the year 1943? You might just read them off from there. 1943, 1944, 1945 and 1946.

A. Okay. I withdrew 3-13-43 the first withdrawal of $6,000;

I withdrew 6-15-43 $6,500;

I withdrew 9-13-43 $6,000;

I withdrew 12-20-43 $7,500;

I withdrew 4-10-44 $350;

I withdrew 5-16-44 $399.50;

I withdrew 5-16-44 $4;

I withdrew 5-16-44 $400.91;

I withdrew 5-16-44 $4.01;

I withdrew 9-13-44 $350;

I withdrew 1-11-45 $350;

I withdrew 3-19-45 $3,000;

I withdrew 6-15-45 $850;

I withdrew 7-20-45 $2,000;

I withdrew 1-15-46 $4,000;

I withdrew 5-28-46 $200;

I withdrew 6-20-46 $9,000.

Q. Did you employ estimators in your work with Kuney and Johnson?

A. Yes, I did, and I do. [235]

Q. You do, you say? A. Yes, sir.

Q. What is your position with Kuney and Johnson at the present time?

A. I am a general partner.

(Testimony of Lloyd W. Johnson.)

Q. And who has the superintendence—the general superintendence over building construction in Kuney and Johnson? A. I do.

Q. Do you employ estimators?

A. Yes, I do.

Q. During the years 1943, 1944 and 1945, can you tell the Court what was the usual going salary for estimators in this community doing the type of work that, say, Mr. Winston Johnson was doing, and Mr. Roy Johnson was doing for the Western Construction Company?

A. We pay our estimators at the present time about $150 a week, but we have one estimator who works for us by the name of Mr. Clagen, who not only does estimating for us, but after he estimates a job he goes out and follows through on the job and buys the material and supervises it, and we pay him $150 a week minimum, but we give him a percentage of the jobs that he goes out to do. Last year he made—oh, I don't know—we did a job down at Astoria for the Navy that he made about $30,000 on. [236]

Q. You allow a sort of a commission on top of their salary, is that it?

A. With that particular man.

Q. With that particular man? A. Yes.

Q. But I mean on your average estimator, what would be the usual and reasonable going wage?

A. From $125 to $150 a week.

Q. Now, how would that wage compare to the

(Testimony of Lloyd W. Johnson.)

years—how would that wage—that is the wage now, as I understand it. A. Yes.

Q. How would that wage compare with the wage, say, during the war?

A. About the same all through the war.

Q. About the same?

A. Yes. Estimators were difficult—very difficult to get. That is, to get a man that you could put your confidence in. There are very few men to do that work. It is a difficult job to do, and it takes a long experience record before you can let somebody get into your plans and make up a bid for a large job, where you have to put up a certified check or you have to put a bidder's bond. When you bid these jobs, you lay all your chips on the table at once. You just don't play for small stakes. [237]

Q. Now, Lloyd, were you familiar with the work that Winston Johnson and Roy Johnson were doing for the Western Construction Company during the years 1942 and 1943, 1944 and 1945?

A. Yes, I was familiar with that.

Q. I am sorry. 1944 would be the end, as I recall the testimony, of Roy Johnson, but Winston then continued into 1945.

A. They were doing work very much similar or exactly similar to the work that I have just been speaking about.

Q. Do you know whether, in addition to the estimating, they did anything further with respect to the estimates?

A. I know that they at various times went out

(Testimony of Lloyd W. Johnson.)

on the jobs after the jobs were obtained and ran the job and obtained material and supervised the construction.

Q. Now, Lloyd, did I ask you last evening, after you went with Kuney-Johnson, what services if any you performed for the Western Construction Company? A. I believe you did, Ralph.

Q. I was not sure. Your witness. May I ask just one more question?

The Court: Yes.

Q. (By Mr. Potts): You had a note missing yesterday—your note I believe, and you found it last night, did you? [238]

A. Yes, I found it down at my office.

Q. And you gave it to me this morning?

A. Yes.

Mr. Potts: You may examine.

Cross-Examination

By Mr. Payne:

Q. Mr. Johnson, you testified that you worked for Mr. Kuney along about 1937 and 1938, is that right? A. That is correct.

Q. Was that on the Montana job?

A. Yes. I corrected that yesterday. I said that it was the Idaho job.

Q. And then you came back to the Western Construction Company? A. Yes, I did.

Q. What year?

A. I came back—it was the Fall and Winter of 1937, I believe.

(Testimony of Lloyd W. Johnson.)

Q. And how long did you remain?

A. I remained on that job for about a year—a little over a year, I guess.

Q. Then what did you do?

A. Then I worked for a short time for the General Construction Company.

Q. Who are they? [239]

A. They are the largest contractors in Seattle. In fact, the largest contractors in the Northwest. The reason I went to them was to gain experience. You go to college and you learn a lot of things out of a textbook, but I had a chance to go for a short time and work for a large construction company, and I felt that that was just as vital as going to school in my particular case, and I took it, and I worked for them a year and a half.

Q. Beginning in 1938 then?

A. I think in 1938.

Q. And continuing how long; through 1939?

A. Yes. 1938 and 1939.

Q. Then what did you do?

A. I came with them over and built the Seattle Tacoma Shipyards down on Harbor Island.

Q. When you say, "With them," whom do you mean?

A. With the General Construction Company.

Q. The Western Construction Company?

A. The General Construction Company.

Q. Oh, the General Construction Company?

A. Yes, sir.

(Testimony of Lloyd W. Johnson.)

Q. And you terminated your employment with about what date? A. I am not sure.

Q. In 1940 or 1941? [240]

A. I think it was in 1941.

Q. And then what did you do after that?

A. Well, it was about that time that I began to get interested with Max Kuney, and Mr. Erickson of the West Coast Construction Company had died, and I spent some time there settling his jobs that were still running and settling his estate, and at the same time doing some odd jobs, or bidding with Kuney. And at the termination of that all came in together there.

there.

Q. Did you enter into a partnership with Kuney?

A. Yes.

Q. What time—1940 or 1941? A. 1941.

Q. Was that early in the year, or do you remember?

A. Oh, I don't remember just when it was in 1941.

Q. Was that an equal partner? A. 50-50.

Q. And that partnership was continued down to the present time? A. Yes, sir.

Q. Were Kuney's offices and place of business then in Spokane? A. That is correct.

Q. How long did that continue?

A. Oh, he still has an office in Spokane. [241]

Q. And you opened offices in Seattle later?

A. We opened offices in Seattle as soon as we got any work here.

Q. I see. Now, do you remember discussing with

(Testimony of Lloyd W. Johnson.)

your father and with J. A. Johnson and Albin Johnson, and with Winston and with Roy the matter of organizing a partnership back in 1941?

A. I don't know the date, but I know that we have discussed that—not only once, but many times. Over a period of years that has been going on.

Q. Do you remember forming a partnership or instituting a partnership agreement in 1941 prior to this limited partnership before the Court?

A. No. When we dissolved the corporation and gave up our stock, it was then understood that we would be partners in the Western Construction Company.

Q. Do you know when you dissolved the corporation? A. Not the exact date—no.

Q. I show you a document and ask you if you have seen that before.

A. Yes, I have seen this. Sure. I have seen that. That is my signature.

Q. Do you recognize the signatures of all the signers of that document?

A. I recognize my own, and my dad's and I recognize [242] J. A.'s.

Q. Now, I will ask you again if that refreshes your memory that there was a discussion of a partnership in 1941? A. Yes, that is right.

Q. And you purported to form one?

A. Yes.

Q. What became of it?

A. Well, this partnership was in effect until the limited partnership started, I guess.

(Testimony of Lloyd W. Johnson.)

Q. You did not render any services under that partnership, did you? A. In 1941?

Q. Yes.

A. I was in Seattle, and I was working in the Western Construction Company's office many times during each week.

Q. Where did you purport to get the investment in that partnership?

A. From the corporation.

Q. Do you know what interest you had in the corporation?

A. I was president of the corporation.

Q. Where did you get your stock in the corporation? A. I got this stock from my father.

Q. He just put it in your name?

A. Yes. That is what I understood.

Q. And you understood that it belonged to [243] him? A. Yes.

Q. Then was there a discussion about this partnership in connection with the formation of the limited partnership in 1942 and the re-alignment of interests in the later partnership?

A. Yes, it was all discussed, how we would go from this into the limited partnership.

Q. Did you advise your father and the others that you were intending to continue your relationships with the Kuney-Johnson partnership?

A. I don't know whether I am going to be in business with Max Kuney tomorrow. I am in a partnership with Max Kuney now, and as soon as the partnership disagrees, the partnership is ended. And

(Testimony of Lloyd W. Johnson.)

what I intended to do in 1940—1941—I didn't have that foresight.

Mr. Payne: We should like to offer this document in evidence, Your Honor, for the purpose of showing——

Mr. Potts (Interposing): I have no objection.

Mr. Payne (Continuing): ——another successful attempt to form a partnership.

Mr. Potts: Now, I object to the comment of Counsel. I have no objection to the introduction of the document or the articles here, and I will get you another copy.

Mr. Payne: All right.

The Court: What is that instrument, you [244] say?

Mr. Potts: Articles of co-partnership between the three sons and the three general partners—that is, the three general partners now of the limited partnership.

The Court: Yes.

Mr. Potts: We have referred, as Your Honor will remember, to this after the dissolution of the corporation.

The Court: Yes.

Mr. Payne: I do not think that that is offered. Under the record as it now exists it shows that the corporation dissolved in 1942, and this is a 1941 partnership.

The Court: This will be referred to as Respondent's Exhibit C.

(Testimony of Lloyd W. Johnson.)

(Document above referred to received in evidence as Respondent's Exhibit C.)

RESPONDENT'S EXHIBIT C

Articles of Co-Partnership

This agreement made and entered into this 6th day of January, 1941, by and between J. A. Johnson, George Johnson, Albin Johnson, Roy W. Johnson, Lloyd W. Johnson, and Winston Johnson, in consideration of the mutual promises to be kept and performed by each of the parties hereto, the said parties agree as follows:

That Whereas the above-named J. A. Johnson, George Johnson, and Albin Johnson, since April, 1934, have been doing business as a co-partnership under the name and style of the Western Construction Company and have also been interested in, as majority stockholders, in the Western Construction Company, Incorporated, a Washington corporation, and

Whereas, Roy W. Johnson, Lloyd W. Johnson and Winston Johnson are the sons of J. A. Johnson, George Johnson, and Albin Johnson in the order named, and

Whereas, Roy W. Johnson and Lloyd Johnson were the owners of a substantial stock interest in said Western Construction Company, Incorporated, and relinquished said stock interest to their respective fathers upon their promise that they would be

(Testimony of Lloyd W. Johnson.)

given an interest in this partnership now being formed, and

Whereas, Winston Johnson, the son of Albin Johnson, has now reached his majority and has given up his college career to enter the construction business and work with his father, and

Whereas, it is the desire of the said J. A. Johnson, George Johnson, and Albin Johnson to have their respective sons, all of whom have been educated and trained in the construction business, to become associated with them in the construction business,

Now Therefore, it is agreed by and between the said parties first above named that said parties form as of this date, a co-partnership, with each party having an equal interest in said partnership from this date forward, provided, however, that the assets of the partnership shall be subject to the following accounting and division: during the period from the beginning of the Western Construction Company, a co-partnership up to April, 1934, the assets, it is admitted and agreed by all parties hereto, belong to J. A. Johnson and George Johnson, exclusively. From April, 1934, up and to the date of the execution of these articles of co-partnership, the increase in assets of said co-partnership, it is agreed herein, belong solely to J. A. Johnson, George Johnson and Albin Johnson, and from this date forward any increase in the assets of said corporation shall belong to the six parties first named herein share and share alike.

(Testimony of Lloyd W. Johnson.)

That the duration of this co-partnership shall be for a period of twenty-five (25) years from date hereof.

That the business to be carried on by the co-partnership is that of a general construction business with main offices in the city of Seattle, State of Washington.

That each of the six parties agree to actively further the interest of said co-partnership and to work together in harmony.

That said J. A. Johnson, George Johnson, and Albin Johnson shall receive out of the earnings of said co-partnership a salary to be agreed upon each year by the partners herein, which salaries are to be deducted from the earnings of the co-partnership before any division is made to the six partners, and Roy W. Johnson, Lloyd Johnson, and Winston Johnson are to receive such compensation as foreman, superintendent, and engineers employed by the partnership receive, until such time as said Roy W. Johnson, Lloyd W. Johnson and Winston Johnson are able to carry on the executive work now being done by their respective fathers, at which time their salaries are to be proportionately increased.

That after the said annual salaries have been paid to J. A. Johnson, George Johnson and Albin Johnson, and all of the operating expenses have been paid for the year, the balance of the net earnings of the partnership shall be distributed pro rata among the six partners hereinto, share and share alike.

In Witness Whereof, the parties hereto have set

(Testimony of Lloyd W. Johnson.)

their hands and seals the day and year first above written.

Witnesses:

/s/ J. A. JOHNSON,

/s/ GEORGE JOHNSON,

/s/ ALBIN JOHNSON,

/s/ LLOYD W. JOHNSON,

/s/ ROY W. JOHNSON,

/s/ WINSTON A. JOHNSON.

Admitted May 25, 1948.

Q. (By Mr. Payne): Mr. Johnson, you testified that you gave your father a $10,000 note along in 1942? A. That is correct.

Q. Did he give you some money previous to that?

A. I borrowed the money from my father.

Q. Did he give you a check for the amount of money that you borrowed? A. Certainly.

Q. And did you deposit that in your own account? A. I don't remember that now. [245]

Q. You don't know how you actually handled the transaction?

A. I know that I got the money from him, and I gave him a note for $10,000.

Q. And then you put that same amount of money back into the Western Construction Company, did you? A. That is correct.

(Testimony of Lloyd W. Johnson.)

Q. He instructed you that that was the purpose of it, and that was what you were to do with it?

A. It was understood—surely.

Q. Did you pay that $10,000 note?

A. The note was turned in, and I was given a $5,000 note in its place.

Q. In the subsequent year? A. Yes, sir.

Q. Did you pay the $5,000 note? A. Yes.

Q. When?

A. I don't know that either. I paid that, I think, in 1946.

Q. You knew that you had a large amount of stated partnership profits in 1942, didn't you, Lloyd?

A. Surely.

Q. How much was that?

A. $40,000, wasn't it? [246]

Q. I show you Petitioners' Exhibit in evidence No. 12, and I will ask you to refresh your memory as to the amount of your stated partnership profits that year. A. $35,615.92.

Q. Why didn't you pay your $10,000 note at that time?

A. Oh, I don't know. I have another note—I borrowed $2,500 from my aunt—Mrs. Victoria Erickson. I still owe her that money, and I never paid her that, and I still pay her interest on that, because she wished me to do that, and that is the way I am doing that.

Q. You knew that interest was running on the note due your father, didn't you?

A. That is right.

(Testimony of Lloyd W. Johnson.)

Q. And you did not withdraw all your stated profits from the partnership, did you?

A. No.

Q. Did they pay you interest on the amounts left in there? A. No. Why should they?

Q. In your business with the Kuney-Johnson partnership in 1942, 1943 and 1944, were you borrowing money for your operations?

A. We borrow money sometimes, and sometimes we do not. It depends on—we run our Kuney-Johnson Company—I will have to explain this to you. We use the Max J. Kuney Company [247] in Spokane as a bank and we draw all our checks on the Max J. Kuney Company in Spokane, and the only time that we borrow money as the Kuney-Johnson Company is when Max Kuney runs out of money in Spokane, and then we borrow money.

Q. You could have used this $35,000 in your Max Kuney business, could you not? A. No.

Q. You didn't have any use for it?

A. No, I didn't have any use for it.

Q. How is that?

A. I didn't have any use for it in the Max Kuney Company.

Q. Weren't you borrowing money in 1942 to run your contracts?

A. I don't think so. We didn't borrow any money until about 1946, and then he borrowed $750,000 from the Seattle First National Bank.

Q. What contract did you have in 1942?

A. We had the Navy contract, NOY 1035. And it

(Testimony of Lloyd W. Johnson.)

ran about a million dollars, to start with, and it finally ended up more than that. And we had a grain elevator contract for the Port of Seattle in the amount of about $500,000.

Q. Who financed those jobs?

A. Max Kuney. Max Kuney has enough capital so that we do not have to go through the bank. [248]

Q. Mr. Johnson, you testified as to the withdrawals of money as shown on Petitioners' Exhibit 12.

A. Yes, sir.

Q. I call your attention to the sixth item on that exhibit 7, the date being 1-13-44—the date of the 1-13-44 return, $3,600. Do you know what that is?

A. Yes. I withdrew quite a bit of money just before that, and after I paid all the taxes and everything I figured that I drew too much money out of the Western Construction Company, and I didn't want to get the two companies confused. I wanted to keep my capital account and my personal account in the Max Kuney Company exactly what I made in the Max Kuney Company, so I returned $3,600 to the Western Construction Company in my own check. I believe that check was made to the Western Construction Company, but I am not sure.

Q. I notice by that same exhibit, Mr. Johnson, under withdrawals you show and have read into the record the amounts of your withdrawals beginning with 1943. Do those dates on there mean—I am referring to 3-13-43 and 6-15-43—what were those dates—tax payment dates?

A. Yes. I withdrew the money to pay the taxes.

(Testimony of Lloyd W. Johnson.)

Q. Did you use all of it for that purpose?

A. I am not sure. I drew out approximate amounts.

Q. The approximate amounts necessary to pay your taxes? A. Approximately, yes. [249]

Q. Isn't it true that those are the only withdrawals that you did make?

A. I don't know. I made a withdrawal down here for $9,000—January or June 20, 1946. I made a withdrawal of $9,000 to go into busines with Dan Bracken, in a restaurant, and to buy some property.

Q. I will ask you about 1943—44—45, if your withdrawals were not limited to the amounts necessary to pay your federal taxes.

A. Approximately, yes, sir.

Q. You testified that you were paying your estimators with Kuney-Johnson about $150 a week. That is in the year 1948, isn't it?

A. That is 1948, and that is also 1943 and 1944, and 1945.

Q. Do you know what you were paying them in 1942?

A. In 1942 I did most of my own estimating. We were just getting started, and we didn't have enough work to keep an estimator on the payroll.

Q. Are you aware of the fact that there was a salary stabilization act in effect along in those years —1942, 1943 and 1944? A. Sure.

Q. Do you know what you were paying estimators under that act during 1942, 1943 and [250] 1944?

(Testimony of Lloyd W. Johnson.)

A. No, I don't. I know what we paid the estimators, and we were subject to the Wage Stabilization Act, and we were reviewed many times, and the wages that we have paid have been passed by all of the boards and all the investigators, and they have never gone into the business and checked us.

Q. Do you know specifically what you paid them in 1942, 1943 and 1944, or are you testifying generally?

A. I am testifying generally, but I know that we had an estimator by the name of Vic Isaacson that we paid $125 a week.

Q. What was his qualification?

A. He was a college graduate.

Q. A graduate engineer?

A. A graduate engineer. He worked for the Puget Sound Bridge and Dredging Company for a while. His father was a small contractor in Portland. He had some outside experience to qualify him to do this work, too.

Q. Could you entrust large jobs to him?

A. No, I always would check them over myself, of course.

Q. Did you pay some others less than the amount that you paid him?

A. No. I think that that was about the minimum that we paid.

Q. How many estimators did you have?

A. Well, we had one until we went to Bangor. When we [251] went to Bangor, we had about three, I think.

(Testimony of Lloyd W. Johnson.)

Mr. Payne: That is all.

Mr. Potts: Just a minute, Mr. Johnson.

Re-Direct Examination

By Mr. Potts:

Q. Taking the schedule that Counsel has supplied us with, I will ask you if your excess of withdrawals over tax payments would not be approximately $26,-341? Now, of course, you would not know the exact figures, but can you look at Exhibit 12 and give us any help on that. I should say, when I stated your excess of withdrawals over tax payments would be approximately $26,341, $26,000 over and above the amount that you withdrew to pay income taxes.

The Court: That is covering the period from 1942 to 1946, inclusive?

Mr. Potts: 1945 I think—'43 to '45.

The Court: All right.

Q. (By Mr. Potts): Is that correct, Lloyd?

A. I cannot answer that question.

Mr. Potts: May I show the witness your schedule that you have there, Mr. Payne?

Mr. Payne: Yes, indeed. (Handing document to Mr. Potts.)

Q. (By Mr. Potts): Will that assist you, [252] Lloyd?

The Court: Are you going to put on the bookkeeper?

The Witness: I am not a bookkeeper and accountant. Let her testify to that.

Mr. Potts: All right. I will save that for her.

(Testimony of Lloyd W. Johnson.)

Q. (By Mr. Potts): Now, your income taxes were quite heavy, were they not?

A. I thought that they were.

Q. Well, you had two businesses. You had both your interest in the Western Construction Company and in the limited partnership, and you had your interest in Kuney-Johnson, is that right?

A. Yes, sir.

Q. During these years?

A. Yes, sir, that is correct.

Q. So that your situation was a little bit different than most of the other limited partners?

A. That is correct.

Q. With respective taxes? A. Yes, sir.

Q. Directing your attention to Respondent's Exhibit C, the articles of co-partnership which Counsel has shown you, that were signed on the 6th day of January, 1941, and I will read you two paragraphs, as follows, as the foundation for asking you a question, "Whereas, Roy W. Johnson and Lloyd [253] Johnson are the owners of a substantial stock interest in said Western Construction Company, Incorporated, and relinquished their stock interests to their respective fathers upon their promise that they would give an interest in this partnership now being formed; and

"Whereas, as Winston Johnson, the son of Albin Johnson, has now reached his majority and has given up his college career to enter the construction business and work with his father; and

"Whereas it is the desire of the said J. A. John-

(Testimony of Lloyd W. Johnson.)

son, George Johnson and Albin Johnson to have their respective sons, all of whom have been educated and trained in the construction business, to become associated with them in the construction business;

"Now, therefore," and so forth—Counsel has asked you whether this was a part of the agreement or if this was an attempt to form a co-partnership that failed.

Now, what were the facts about the making of this co-partnership. Directing your attention to those paragraphs that I have just read relative to the construction company incorporated, what were the facts about the making of this co-partnership?

A. Well, the facts there were just that we gave up our stock in the Western Construction Company, Incorporated, and were given an interest in the Western Construction Company. [254]

Q. Let me put it this way, Lloyd. Wasn't Exhibit C here an attempt to hold you, among other things—wasn't it an attempt to hold you in the business with your father and your uncles and your cousins, when this Kuney Company was developing?

A. Yes. That was always discussed, why should I go with somebody else when I had an opportunity like this here?

Q. Now, when you went with Mr. Kuney, Counsel has asked you if Mr. Kuney's offices were in Spokane, and your answer was, "Yes." Did you spend any time in Spokane?

A. No. I spent all of my time here. The only

(Testimony of Lloyd W. Johnson.)

time I would go to Spokane would be for an occasional trip—just to bid a job.

Q. And now, Emil Erickson was your uncle who did business under the name and style of the West Coast Construction Company, is that correct?

A. Yes, that is correct.

Q. And when you refer to helping out after his death, you were assisting your aunt in cleaning up the details of that construction business, weren't you? A. Surely.

Q. Were there things to be finished there?

A. Well, there was not very much to be finished, but there were just the ends of closing up the business, that is all. Somebody had to take care of those detailed ends. [255]

Mr. Potts: That is all.

Re-Cross-Examination

By Mr. Payne:

Q. Mr. Johnson, you said in answer to Mr. Potts' question, that you gave up your stock in the corporation. You never did own that stock, did you?

A. I had it in my name.

Q. And that is all? A. Yes, sir.

Q. You said that the articles of partnership, Exhibit C, was an attempt to hold you and the other sons with your fathers. You didn't go along with that plan, did you?

A. As I pointed out to you before I believe that one of the most important things in the education

(Testimony of Lloyd W. Johnson.)

of a young engineer who does some day think that he is going to be a contractor is that he finds out how the other fellow does it. It works this way. The people you are working for may make some money, but how do you know that they are building those buildings right. They may be building them wrong. So I went out and found out from somebody else, and I think the record will show that maybe I got some experience that was all right too. At least I made some money. I did a lot of building.

Q. Let me ask you this, did you go with Mr. Kuney against the wishes of your father?

A. Yes. He always wanted me to stay right with the [256] Western Construction Company.

Q. Now, let me ask you another question. You said that your mother died in 1920? A. Yes.

Q. Is that right? A. That is right.

Q. Did your father ever talk to you about your interest in her estate?

A. Yes, he talked to me about that when I became of age. When I became 21, why he told us—we knew at that time—we were grown up, and we knew that we had an interest there, and he discussed it with us, and we had no reason at that time to pull the money out of the Western Construction Company.

Q. Did he ever discuss with you the value of that interest, back in 1920 when she died? A. No.

Q. Did he ever discuss with you the value of it after the depression years of 1935 and 1936, and so forth?

(Testimony of Lloyd W. Johnson.)

A. No, he never discussed its value at all. We just discussed the fact that there was an interest there, and that we had an interest in the company, and we had an interest in the property, too.

Q. Do you understand that that is still pending in her estate? [257] A. Absolutely.

Q. How much?

A. There is nothing that has been done—there has never been anything done on it, and we have never signed any papers or gone to court, which I realize is what we have to do to wash out a deal like that. But that has never been done.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.) [258]

Whereupon,

ROY W. JOHNSON

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. State your full name.

A. Roy W. Johnson.

Q. And your residence?

A. 1520 Olin Place.

Q. In Seattle, Washington? A. Yes.

Q. How long have you lived in Seattle, Washington?

A. Thirty-eight years; all my life.

(Testimony of Roy W. Johnson.)

Q. And what has your education been, Mr. Johnson?

A. I had my elementary and high school training in Seattle and then I went to the University of Washington and I received a degree in civil engineering in 1932.

Q. Did you specialize or take any other engineering course besides civil engineering at the University?

A. No; except in the curriculum for civil engineering we have a little mechanical and electrical but that goes with it. I majored in structures and hydraulics.

Q. Now, you are the son, are you not, of J. A. Johnson, [259] one of the partners in Western Construction Company, a limited partnership?

A. That is right.

Q. Can you tell the Court when you began to work for Western Construction Company?

A. Yes; near 1923 when I was 13 years old I had my first employment on the Schaeffer building at Sixth and Pine in Seattle.

Q. Since then what have you done, if anything, with the construction business?

A. Each summer and each school vacation, likewise Christmas vacation, I went on the job Western Construction had in process at that time. Besides the Schaeffer building, there was a garage at Third and Blanchard, the Puget Sound Bank, the Oregon City Woolen Mills, Queen Anne Apartments, Marl-

(Testimony of Roy W. Johnson.)

borough House, and there was probably two or three others in the time I was there.

Q. Now, after you graduated from the University of Washington and took your degree in civil engineering, what did you do after that?

A. Well, I finished the University in 1932, right at the peak of the bottom of the depression and employment was rather difficult to secure, but I and one other fellow from our civil engineering class were lucky to get jobs and we received employment in the engineering department of Boeing Aircraft Company. [250]

Q. What department; what kind of work did you do?

A. I was doing engineering, lay-out work, detailing, and stress analysis, from 1932 to 1935. Three and a half years. And after that I went to work for the Army Engineers at Portland, Oregon, on the design of the fishway structures for Bonneville Dam.

Q. How long did you stay there?

A. Six months, temporary appointment, until the spring of 1936. Then I was a year with the Portland General Electric Company, from the spring of 1936 until the spring of 1937, at which time I was designing the trolley overhead system for Portland, Oregon, laying out the curves for intersections for the trolley wires overhead. At the close of that employment, I worked for the Howe Sound Company at Chelan, Washington, designing a concentrator mill at Lake Chelan. I was there the summer of 1937 and then I went to Port Angeles and was employed

(Testimony of Roy W. Johnson.)

by Ray Mear, Incorporated, on a pump mill at Port Angeles, and then designed a steel boiler for a new mill at Fernandina Valley. That took me until the fall, I think it was, of 1938. Then I was with the State Highway Department at Olympia, designing bridges for about six months, and then I went to Portland, Oregon, again, and had a job with the Bonneville Power Administration as assistant engineer, at which time I was designing structures and river crossing towers for the [261] Bonneville Power Administration. I was there until the fall of 1939; I was there thirteen months. And then I came to Seattle and had charge of the design of the trolley overhead system in Seattle at the time that the city rehabilitated the transportation system and took out the old street cars.

Q. In regard to that project, did you do anything other than design it?

A. Oh, I had about over twenty or thirty engineers and draftsmen under me and we laid out the routes and the general design and then took down the detailed design and the curves and intersections to lay out the work.

Q. What about the material?

A. Oh, yes, we ordered all the special work. The curves and the turn sections and hardware and cable and wire and insulators and all the hardware required.

Q. All right; what did you do after you completed that work for the Seattle Transit System?

(Testimony of Roy W. Johnson.)

A. Then I opened an office of my own as a professional engineer.

Q. Will you give us about the time?

A. That must have been in the fall of, I think, 1939, and I started to hang out my own shingle as a professional engineer and one of my chief jobs was to take off quantities for the Quartermaster Corps of the United States Army on hangars and other structures that they were building in Alaska. [262] And then I became associated with the Metcalfs; they were appraising public utilities for the sale of electric power and public water systems and I was with them about six or seven months, and we were working on the sale of public, or electric systems.

Q. Those are what is known as PUD systems?

A. Yes; public utilities districts.

Q. Yes.

A. And then I worked on the appraisal of a public water and electric system in Sitka, Alaska, at the time they formed their own utility arrangement. After that I worked on the design of the Seattle Port of Embarkation pier for the firm of Bevin, Jones and Boulon, and from there I went to the Port of Seattle, and designed the terminal which is now used by the Alaska Steamship and Northland Transportation Company. That is the largest pier in the City. After that I worked at Bellingham as chief engineer and general manager of the Bellingham Iron Works. They were doing war work making parts and casings for small shipyards up and down the coast. At the end of that I was back with

(Testimony of Roy W. Johnson.)

Bevin, Jones and Boulon and we were designing a steam boiler plant for the Army Air Depot at Spokane, and worked on designs for housing projects and sewage disposal facilities. That took us through 1942; so that during that time, from 1932 to 1942, during the depression years and during the beginning of war, I was getting various experience as a designer [263] and structural engineer in these various capacities through the States of Oregon and Washington.

During that time, while I was in Seattle, I was helping Western Construction Company every time they had a bridge job. I was employed to design the false work that supported the bridge during time of construction, to support the form work for the bridge and also helping them take off quantities and do estimating on projects from time to time.

Q. Now, Mr. Johnson, directing your attention to the formation of the limited partnership of Western Construction Company, in 1942, will you tell the Court what you know about the formation of that limited partnership?

A. After the Coulee Project, or construction job, the company was hard hit financially and they formed this corporation of which you have heard previous testimony and I was the vice president of that organization. After the company was again on its feet and had retired its debts, it was decided to change it back into a partnership and I was invited to retain an interest in the company.

Q. At this point may I interrupt you, Mr. John-

(Testimony of Roy W. Johnson.)

son, and show you Exhibit C. Would you look that over and tell the Court what you remember about that instrument?

A. Whereas Lloyd Johnson and Roy Johnson——

Q. You don't need to read it out loud. It is in evidence. Let me ask you some questions about it. Is that your [264] signature, by the way?

A. That is right.

Q. Do you recall this? A. Yes, I do.

Q. What was the purpose of these articles of co-partnership dated the 6th day of January, 1941?

A. The purpose was to establish a partnership of Western Construction Company to carry on the business and to take in Lloyd and Winston and myself into the partnership and get us established so that at a future date we would eventually be the—we would have the full responsibility of the business in our own hands as the older partners retired.

Q. Can you tell us about the age of your father and your uncles? A. That was about——

Q. 1941.

A. 1941, Dad was 62 and George then would be—I think he is two years younger, so that would be about 60; and Albin, six years younger, so he would be about 54.

Q. Can you tell us anything about your father's health at that time?

A. Well, Dad has been fighting a physical handicap all his life. One of his principle troubles has been a leg ailment, I think it is called osteomolitis. It is a bone infection. I think he had operations first

(Testimony of Roy W. Johnson.)

when he was seven years [265] old and I think he has had eight major operations, and then it would go through his system and affect his whole health and his health has not been too good lately, and he has been having trouble, certainly for ten years, and he has slowed up considerably, but he has been a hard worker and it is hard to slow up.

Q. Now, Roy, after these articles were executed, did you continue on then as six general partners, or what happend, do you recall?

A. Well, we carried on in that capacity for a time. Of course, I was doing this other work and I couldn't leave immediately to devote my full time to the business, but the idea was that we would, us three new or younger partners, would render such service as engineers, superintendents, foremen and estimators as we were able to do and as circumstances permitted but, as Lloyd Johnson has testified, it has been our intention and in the back of our minds, that eventually we would become owners or the partners in Western Construction Company. That has been my interest all my life, and my personal desire was that I wanted to work with Dad and be a partner with him and carry on business together, because construction business, and engineering, and the building of structures has been my goal and my aim and my life, and it is something I wanted to do and I was looking forward to the time when I could devote full time with Dad in the business. [266]

Q. Back in 1941, review for me again, what were

(Testimony of Roy W. Johnson.)

you doing? With whom were you employed at that time?

A. In 1941 I was chief engineer and general manager of the Bellingham Iron Works.

Q. And can you tell us approximately what salary you were getting at that time?

A. I was getting then about five hundred dollars a month.

Q. And were you married at that time?

A. Yes.

Q. Did you own your own home?

A. Yes.

Q. Where was that home?

A. My home was on Capital Hill, 1520 Olin Place, just on the east side of Lake View Cemetery.

Q. That is the same address you have given; you are still living in the same place?

A. Yes; I purchased that home in 1940.

Q. All right. Now, what was the financial condition of Western Construction Company at that time in 1941; can you tell us?

A. Well, they were just getting out of the slump and getting some debts retired that they incurred, especially on the Coulee Project.

Q. Now, you have heard Lloyd Johnson testify about his relations with Kuney? [267]

A. Yes.

Q. Do you know whether that had anything to do with the formation of this partnership; the articles of which we have just shown you?

A. It was a desire of all of us to work together

(Testimony of Roy W. Johnson.)

and if we could have the basis for an association, it would be showing that the intent was to get us together and as circumstances would permit, we would have one goal to work toward.

Q. At that time you and Lloyd were both rather mature and had good connections and positions, didn't you?

A. That is right. I was born in 1910 so that I was 31 years old and beginning to get dry behind the ears.

Q. Now, can you tell the court whether you did work under those articles of copartnership that have just been shown you?

A. Yes, business had been carried on for sometime under that arrangement and I was not able to give full time but a little time and service from time to time on false work, estimating and design if I was in Seattle and able to give further time.

Q. I ask you whether or not about that time the Western Construction Company wasn't tied up with Emil Erickson or West Coast Construction Company in a joint venture?

A. It was at the time they had this joint venture with the West Coast at Bremerton. [268]

Q. Yes, and it was sometime before that project was out of the way, wasn't it?

A. Yes; it was. That carried through 1942, I think, if I remember right.

Q. Through 1942 or into? A. Into 1942.

Q. Now, with respect to the limited partnership, which is before the court here, will you tell the court

(Testimony of Roy W. Johnson.)

how that came to be organized and how you obtained your interest?

A. This partnership arrangement of the three fathers and the three sons carried on by them, it was felt that here we have each of the fathers having a family of one son and several daughters each and it appeared like an arrangement in which the sons were going to inherit the business and take over without a fair allotment towards the sisters and their husbands and Rachel was married to Len, who was also a graduate engineer, and my sister Evelyn had a husband who was a pressman who you have spoken about but he is full of life and energy and we said that if we bring in the sisters we want them to share in the inheritance or in the business as it were, wanting their husbands to receive a part of the business and if circumstances permitted let them come into the business and that with that stronger backing and the greater resources we could build a larger company and carry forward to larger projects. I have always been interested in hydro-electric [269] work and dam construction and I felt that if we younger fellows took ahold we could spread out and take larger projects and larger jobs and do work that we enjoyed to do and also possibly substantially increase the earning power.

Q. Now, let me ask you this, how could you get your interest in the partnership, the limited partnership?

A. I subscribed a contribution to the capital of Western Construction in the amount of $6,666.66.

(Testimony of Roy W. Johnson.)

Q. Where did you get the money; the $6,666.66.

A. I borrowed that from dad, J. A. Johnson.

Q. How did you borrow?

A. As I recall it, dad gave me a check in that amount and for the check I gave dad a note.

Q. And what did you do with the money?

A. I turned it into Western Construction Company.

Q. Now, at that time, what were your financial responsibilities, say with respect to paying that note, the $6,666.66.

A. Well, I had good employment and good back ground and training and had the jobs and was making fairly good money and I enjoyed and continued to enjoy good health and figured that I was a good risk and I owned a fine home and car and had a few thousand dollars in the bank.

Q. Now, did you own your home outright at that time? A. No. [270]

Q. How much did you owe on it?

Mr. Payne: I object to that.

A. Six thousand.

Q. What was the value of the home?

A. The home at the time, I paid 11 thousand for it. Now I guess it is worth twice that or more.

Q. But you had a five thousand dollar equity in the home? A. Yes.

Q. Now, your interest was never changed, was it?

A. No.

Q. You had a sister who was not a member of the limited partnership?

(Testimony of Roy W. Johnson.)

A. Yes; she was a younger sister and not of age at that time.

Q. Now, let me ask you this, after the limited partnership was entered into, you gave your check. What did you do then about your carrying on the construction business?

A. Well, the same as we did before. It was our intention to keep on going, but I was unable to devote full time until January, 1943, and at that time Western Construction Company had signed a contract for the construction of a housing project at Renton, Washington, and it was convenient then to leave my work with Veni Bevin, Jones and Boulon and go to Renton. [271]

Q. Did you then give your full time to Western or not? A. Yes, I did.

Q. And can you fix the date, approximately?

A. Right after New Years, 1943, the first week.

Q. What did you do with Western?

A. The first thing I did was to lay out the roads and utilities and buildings out at this project site at Renton. I did the surveying and staking out of the construction and after that work was completed I assisted the general superintendent on the project in dispatching the construction and acting as sort of an assistant superintendent as much as engineer.

Q. Who was the general superintendent on that job? A. Axel Hallberg.

Q. He was an employee, was he? A. Yes.

Q. Now, just go on and tell the court what other work you did and continue right on, if you will, as

(Testimony of Roy W. Johnson.)

long as you were with Western and tell the court what you did.

A. We were at the Renton Housing Project. It wasn't completed until late in the summer or fall, but I assisted Axel Hallberg and dad in ordering materials and seeing that the men had their materials distributed and helping to supervise the work. I also did all the engineering and designing of roads that came about as changes in the construction. There was a [272] little bridge that they put in and I designed the abutments and false work so that we could go in and put this bridge in and at the same time keep the traffic going and was kind of an assistant superintendent and engineer on the project. Then I was in the office while the company was bidding on additional work and they were bidding on the Alaska Transport Stock Shed. I helped take off quantities and estimate that job and we were low bidder and then I went down to help the superintendent at that project, whose name was Gus Nelson, and I again laid out the ground and staked out the excavation so that the diesels and shovels could keep ahead, and laid out the false work so that our carpenters could put in the foundations and follow right through with the docks until that job was on it way and then I came back into the office and was estimating projects, like the Boeing buildings and the cafeteria and food service building. We turned in estimates and bids on other jobs too. At the same time the terminal project came up and it was the same project that I had worked on the

(Testimony of Roy W. Johnson.)

design of with the Port of Seattle and they were advertising for bids for the construction of the two pier sheds; they are a little over 120 feet wide and 1 thousand feet long and it was quite familiar to me having been in the designing and I helped prepare the bids and we were low on that and so I helped my uncle George and Gus Nelson get that work done. Among the peculiarities of that construction was a large hollow dome of 120 foot [273] span and I designed that and helped lay out details for construction. Since we got that job and the Boeing Cafeteria at the same time, I worked on both of them as an interested partner of Western Construction.

Q. Let me ask you this, what salary were you getting during this period which you have just recited from Western?

A. At that time I was being paid on an hourly basis, the basic was $2.05 an hour, as I recall it.

Q. How did that measure up to wages that other companies in this community were paying for the same kind of service?

Mr. Payne: If you know the salaries other companies were paying?

A. Yes. In this instance I know. When we first started I was getting less than that and then the architects and technicians—there is a local union in town for technicians and architects and engineers—and they were paying transit men $2.05 an hour and I know dad said doing that is not substantial work and costs are increasing and I think it fair

(Testimony of Roy W. Johnson.)

that he get at least what they are paying transit men; although I knew that in the meantime I had an interest in the company and was sharing in the profits, yet I had to live at the same time and so I was getting just the minimum of what other men of the same classifications were getting, although I was doing, because of my interest in the company, many other [274] things and taking more responsibility than an ordinary engineer would.

Q. All right; what other work did you do, right on up to the last work for the company?

A. Well, it was decided between the general partners and ourselves that it would be best if I went down and helped Axel Hallberg on the Boeing buildings and I did the same work again, lay out for construction, foundations and excavation and footings and columns and arches, because the terminal job was getting well along. And then it was decided that I better act as the superintendent on the smaller ones, two buildings, while Axel Hallberg looked after the cafeteria.

Q. You mentioned superintendents; how many superintendents did Western have at that time?

A. There were three or four.

Q. Can you name them?

A. Yes; Axel Hallberg, Gus Nelson, and there was a man named Johnson. I forget his first name, but he was looking after the street work, community shopping center, up in Renton Heights and then there was Mr. McKee and he was looking after one

(Testimony of Roy W. Johnson.)

of the other jobs. Perhaps one of the smaller ones. But I remember distinctly there was four.

Q. Now you go right ahead; I didn't want to interupt you.

A. So that on each of the jobs they have got to have a [275] general superintendent, and I became the superintendent on the construction of the food service building at the Boeing plant Number 2, and I carried that through to completion. Then I went back into the office and was busy estimating on other projects. One was an ammunition testing depot, I think they called it, for the Navy, and there were several jobs in process at that time.

But, like I mentioned previously, I had an interest in hydroelectric work and being a designer and engineer also, I wanted to see the company branch out eventually into that type of work and I had a friend at Ketchikan, Alaska, who was superintendent of the Ketchikan Public Utilities and he knew of my experience in hydroelectric work and civil engineering and general construction and he wanted me to come up and be their engineer on the new hydroelectric facilities and about this time this offer came, I felt it would be a good thing to undertake that work.

Q. Now, can you give us the date?

A. That was in June, 1944.

Q. June, 1944? A. Yes.

Q. Now, do I understand then that from January, the 1st of January, 1933, to June, 1944, you

(Testimony of Roy W. Johnson.)

had been with Western all the time doing the work you have just related? A. That is right. [276]

Q. Now, what happened then after June, 1944, with respect to your work?

A. I asked for leave of absence from the general partnership and told them what I had in mind and felt that if I left full time interest in Western Construction for a little while to do this engineering, it wouldn't do Western Construction Company any harm but would broaden the scope of our background and it would be a good job to take so that I left at that time expecting just to do the engineering on that. I took this work as a private engineer under my own name, Roy W. Johnson, and I did work in Western Construction Company's office so that we were all tied together. I was up north for about seven weeks from the middle of June to the 1st of August of that year and ran surveys. I surveyed the power house site, pipe line, and tunnel locations, and the transmission line, and then I hired some engineer and planned the plans and specifications. During January bids were opened for the construction of this project and we estimated the cost around one-half million dollars and bids were received from about three companies but they exceeded the funds available and the estimates so much that the City of Ketchikan decided they would have to reject the bids.

Q. Just a minute. May I ask whether or not Western Construction Company was one of the bidders?

(Testimony of Roy W. Johnson.)

A. No. I wanted them to bid but they decided it would [277] be better if they did not because they had considerable work down here and were finishing up the terminal and other jobs and they were not too much interested in going that far out of town when there was plenty in Seattle and then, also, there was heavy construction involving tunneling and dams and hydroelectrics and they had had experience in that type of work at Grand Coulee Dam and they decided they wouldn't bid at that time and so we got bids from three other companies. I think Morriss and Knutson submitted a bid, and Mr. Summers of Juneau, and one other party and they all exceeded the funds available and the estimates and we tried to negotiate with the low bidder and he didn't want to consider a lower price and as engineer for the City of Ketchikan, I wanted to see the thing built, and the engineer said, maybe we can get it built by letting it out in small contracts and we got proposals from the contractors, from smaller people, who were interested in putting in the tunnel only, or just the transmission line, and felt if we could get these small units organized, we would be able to do it. I could be the engineer and kind of coordinate the activities and by letting out five or six small contracts instead of one big contract, we would get the project done anyway and the city officials encouraged me to proceed by that manner but I ran into difficulty because the job was about twelve miles out of Ketchikan by water and there was no road and somebody had to

(Testimony of Roy W. Johnson.)

provide the transportation and we had to [278] have a construction camp and nobody was willing to do that. Then I began to see that as an engineer I was getting myself an awful lot of work by acting more or less as a general contractor so then I said, well, if I am going to get this job done and act as general contractor in this capacity, I might as well be actual contractor so then we discussed the transportation and the camp and they said, why don't you do the job, and I said, well, maybe I can. If you will allow me, I will go back to Seattle and see if I can't raise the bond and maybe take the contract and I came down to Seattle and dad and I went over the figures and we decided that five hundred thousand dollars was a good bid for doing all the work and I went up and tendered the proposal and the City gave me the general construction contract and that is how I got in the construction business and that job was completed last fall.

Q. Yes. This last fall? A. Yes.

Mr. Potts: Would you mark this, please?

The Court: Petitiner's Exhibit 15, for identification.

(The document referred to was marked Petitioner's Exhibit 15 for identification.

Q. (By Mr. Potts): Showing you Exhibit 15, marked for identification—— A. Yes. [279]

Q. Would you examine that, please, and tell the court what that is?

A. This is the statement of my interest in Wes-

(Testimony of Roy W. Johnson.)

tern Construction Company. It shows the initial investment of $6,666.66, plus the accumulated interest I received through the earnings of 1943 on; 1943, 1944, and 1945.

Q. And do they total—— A. $60,433.97.

Q. Now, would you go on and explain the exhibit?

A. Then the next paragraph, in the withdrawals of my interest from Western Construction Company. They started in March 13, 1943, at which time I took out $2,050 for taxes and $950 as a cash withdrawal. Then June 15, 1943, 2,050 dollars for income tax; September 13, 1943, $2,050; and December 28, 1943, $2,050. Then again on April 10, 1944, six hundred dollars; May 15, 1944, $380.92; and May 15, 1944, it was $381, and also on the same date, $532.13. Also on May 15, 1944, $532. Then on June 13, 1944, withdrawal of $600 and on September 13, 1944, $600. On January 10, 1945, withdrawal of $1,000; on March 1, 1945, a cash withdrawal of $20,000. On March 13, 1945, withdrawal of $455.61; on March 13, 1945, $457.48; on June 26, 1945, cash withdrawal of ten thousand dollars and on July 30, 1945, a withdrawal of nine thousand dollars, making a total of withdrawals of $52,785.27.

Q. Now, take the next. [280]

A. Then on May 31, 1946, I returned to Western Construction Company, for an overdraft, the amount of $6,600.00.

Q. Will you explain that to the court?

A. I had taken these withdrawals just previ-

(Testimony of Roy W. Johnson.)

ously mentioned at a rate that was higher than I was entitled to and I had overdrawn in the amount of something like six or seven thousand and I was up at Ketchikan and I received a note from Mrs. Potts and she said you have overdrawn and you better send me back the money so that I sent a check for 66 hundred dollars.

Q. And that was while you were doing this contracting?

A. Yes. I withdrew it for my working capital at Ketchikan.

Q. All right.

A. On December 31, 1946, I was credited with $2822 for a share in net profit. Then on January 14, 1946, I took out $126.52 and there was a bank charge of $16.50. I think that was for transfer charges from Seattle to Ketchikan. On February 2, 1947, I withdrew three thousand dollars in cash and again, February 17, 1947, I withdrew $2,500, making a total of $58,428.29.

Mr. Potts: We offer, if the court, please, Petitioner's Exhibit 15. A little later when we place the bookkeeper on the stand there is one check that covers some of these items and that will be explained. [281]

Mr. Payne: No objection.

The Court: Very well. It will be received as Petitioner's Exhibit Number 15.

Q. (By Mr. Potts): Now, after you got through with your project up at Ketchikan, what did you do after that?

(Testimony of Roy W. Johnson.)

A. Well, I have been doing other work along with this project. For instance, at Sitka, I was employed as engineer there and I designed a hydro-electric installation for the City of Sitka.

(The document heretofore marked Petitioner's Exhibit 15 was admitted in evidence as Petitioner's Exhibit 15.)

PETITIONER'S EXHIBIT No. 15

Roy W. Johnson

Jan. 1, 1942, to Dec. 31, 1945.

5/28/1942	Cash investment		$ 6,666.66
12/31/1942	Share of profits, 1942		23,743.94
12/31/1942	Share of profits, 6 mos. 1943		11,946.54
12/31/1942	Share of profits, 6 mos. 1943		7,718.17
12/31/1942	Share of profits, 1944		2,767.00
12/31/1942	Share of profits, 1945		7,591.66
			$60,433.97
Withdrawals			
3/13/1943	Income tax	$2,050.00	
	Cash	950.00	$ 3,000.00
6/15/1943	Income tax		2,050.00
9/13/1943	Income tax		2,050.00
12/28/1943	Income tax		2,050.00
4/10/1944	Collector of Internal Revenue		600.00
5/15/1944	Collector of Internal Revenue		380.92
5/15/1944	Collector of Internal Revenue		3.81
5/15/1944	Collector of Internal Revenue		532.13
5/15/1944	Collector of Internal Revenue		5.32
6/13/1944	Collector of Internal Revenue		600.00
9/13/1944	Collector of Internal Revenue		600.00
1/10/1945	Cash withdrawal		1,000.00
3/ 1/1945	Cash withdrawal		20,000.00
3/13/1945	Collector of Internal Revenue		455.61
3/13/1945	Collector of Internal Revenue		457.48
6/26/1945	Cash withdrawal		10,000.00
7/30/1945	Cash withdrawal		9,000.00
			$52,785.27

(Testimony of Roy W. Johnson.)

Investment amount brought forward		$60,433.97
5/31/1946	Return of overdraft	6,600.00
12/31/1946	Share of net profit	28.22
		$67,062.19

Withdrawals brought forward		$52,785.27
1/14/1946		126.52
6/29/1946	Bank charge	16.50
2/ 2/1947	Cash withdrawal	3,000.00
2/19/1947	Cash withdrawal	2,500.00
		$58,428.29

Admitted May 25, 1948.

Q. (By Mr. Potts): Where is your office now?

A. 605 Arctic Building. I use the same space Western Construction Company does.

Q. Is Western Construction Company active at the present time? A. No.

Q. Who is taking care of their business there?

A. Oh, I am helping to take care of the business as mail comes in that is important. I look it over and if it is something I can take care of, I do; and if it is something the general partners need, I give it to them, and I [282] have a girl there and as Western Construction Business comes in and it is a matter for the general partners to take care of, I see that they get it, but the general partners are not down very much any more.

Q. Was there any meeting of the limited partners as such ever held? A. No.

Q. Did you receive any certificate or any instrument that showed your interest in the partnership other than the articles of copartnership?

(Testimony of Roy W. Johnson.)

A. That is all; just the articles.

Q. Was there a president or a secretary or any officer elected with respect to the limited partners?

A. No; there was none at all.

Q. Did you ever give a proxy to any one for your interest to vote it? A. No, sir.

The Court: Did the partnership have a seal?

The Witness: I never saw one.

Mr. Potts: Your witness.

The Court: We might as well take a ten minute recess before we begin the cross-examination.

(Whereupon, a recess was had from 10:50 o'clock, a.m., until 11:00 o'clock, a.m., May 25, 1948.)

The Court: All right; you may proceed. [283]

Mr. Potts: May I have your indulgence; I would like to ask another question.

Q. (By Mr. Potts): You have given us the names of some superintendents that the partnership had. What was your relation as respects the work with these superintendents?

A. Well, I was one of the partners of Western Construction so they were my subordinates. I was superior to the superintendents but I was doing work on these jobs that they could not do. I was trained technically to design and engineer that none of these superintendents were qualified to perform.

Q. Were any of these superintendents civil or structural engineers? A. No.

Mr. Potts: Your witness.

(Testimony of Roy W. Johnson.)

Cross-Examination

By Mr. Payne:

Q. In connection with the testimony you just gave, Mr. Johnson, I show you a document, Petitioner's Exhibit 1, and call your attention to paragraph 10 of that document and ask you what the purport of that paragraph is?

The Court: Do you want him to read the paragraph?

A. The entire management of the partnership shall be vested in the three general partners and the right is hereby [284] given to the remaining partners to continue the business upon the death or retirement of a general partner, and the right is also given to the general partners to continue the business upon death or retirement of any of the limited partners hereto.

Q. Is that your understanding of the limited partners, that the management and direction was given to the limited partners?

The Court: To the general partners, you mean.

Q. I mean limited partners. I am sorry, general partners. A. That is right.

Q. And I show you Exhibit Number 3, in evidence, which is the second limited partnership and call your attention to paragraph 10 of that agreement and ask you if that is the same as the one you have just read? A. Well,——

Q. The one you just read from, Mr. Johnson, is the agreement executed February 24, 1942; Exhibit

(Testimony of Roy W. Johnson.)

Number 3, which I now show you, is the second one executed——

A. June 30, 1943. Oh, yes, the difference——

Q. I just ask you about the paragraph 10, regarding the management. That is the same?

A. Yes; that is right.

Q. So when you state that as a partner you had a right to direct the affairs of the partnership, that is your own [285] conclusion, isn't it?

A. You mean in the question that Mr. Potts just gave me?

Q. Yes.

A. It probably is my own conclusion in one sense, but we are working together and I have been on many jobs and was trying to work like a team and we don't try to put one up above the other such that he is the boss. It is a mutal understanding. We talk these things over and we understand but in the sense I was one of the partners of Western Construction, I had authority over the general superintendent but we worked together and I did the work that they couldn't perform, the technical work.

Q. What do you mean by that?

A. The technical work; the laying out, designing, false work, surveying, and stress analysis and figuring out sizes of beams, the false work, that they were not able to do.

Q. Who was the general superintendent?

A. The general superintendent on the Renton Project was Axel Hallberg.

Q. That is just on one project?

(Testimony of Roy W. Johnson.)

A. Yes; in other words, the way it is set up as these projects came along, first my dad would take a job and then next one, George, and then Alvin. Then more jobs would come along so there were times when each of the general partners are looking after two or three different construction jobs [286] and then on each of the construction jobs they would place a superintendent who would work under the general partner to give directions to the foreman to see that we had materials on time ahead of the workmen. So far as where the general partners were, they went from place to place. They were continually on the job and then in the construction of these jobs, the survey and staking out, had to be performed, and elevations established, and the false work had to be designed to support the concrete forms and floors and there was design changes coming up which a contractor has to perform and that was work that I was doing and then at the same time Axel Hallberg and Gus Nelson worked together and we would agree, and say, Roy, you can go down and take care of that gang and see that this is started and I would go and do that and Nelson, in pouring concrete, would be doing another phase and all the time there was an exchange of assistance.

Q. Is it true that each of the three general partners took certain responsibility for certain jobs taken by the partnership?

A. That is right; instead of having too many cooks in one broth, they divided the jobs up so that

(Testimony of Roy W. Johnson.)

there would be centralized authority on each job and that way there was no duplication of effort and then when difficult problems came up that required the advice and assistance of the others, they would discuss it generally and mutually agree what should [287] be done but on the particular job in question, that general partner would execute the performance of that decision.

Q. You said that you had superintendance of one job, the service building at Boeing?

A. Yes.

Q. How large a job was that?

A. Oh, that job was in the neighborhood of 200 thousand dollars.

Q. Was that one of your father's jobs?

A. Yes.

Q. You worked there under the direction of your father? A. Yes.

Q. Mr. Johnson, you testified about three or four other superintendents on the Western Construction jobs? A. Yes.

Q. Do you know what scale of pay they were given?

A. Oh, I am not sure because I didn't sign the pay rolls but it was somewhere around 125 dollars a week; in that neighborhood.

Q. Did they pay them on a weekly basis? Or hourly basis?

A. On an hourly basis, no. On a weekly basis.

Q. You said you were paid on an hourly basis with Western?

(Testimony of Roy W. Johnson.)

A. For a time during 1943 and 1944; yes.

Q. And then you said you complained to your father that [288] you weren't getting enough and asked him to put you on an hourly basis?

A. I had some obligations to meet and I needed a little more cash that I didn't withdraw from the company at that time so I felt in line with the work that I was performing that I was justified in getting more cash at the time.

Q. And then did they pay you the $2.05 an hour?

A. Yes.

Q. And I suppose you got some over time in on those too, didn't you?

A. I think I turned in a few hours over time; but I was working overtime every day.

Q. Double time for over time?

A. No, at most time and a half.

Q. Were you a member of the Union?

A. No.

Q. The other superintendents were not members of the union either?

A. I don't know. I think some of them were members of the carpenters union, but I have never joined any union.

Q. What was the scale of the pay of a first class carpenter at that time?

A. As I recall, it was about $1.70 an hour, or $1.75.

Q. Now, Mr. Johnson, coming back to the first part of your testimony, you testified that you were

(Testimony of Roy W. Johnson.)

vice president of [289] Western Construction Company, Incorporated? A. That is right.

Q. Who was president?

A. Lloyd Johnson.

Q. How long did you continue as such officers?

A. During the full existence of that corporation. I don't remember now how long it was. About four years, I think.

Q. How did you obtain those jobs; did your fathers ask you to take those jobs? A. Yes.

Q. Why?

A. In order that they would be able to continue in business during the time that they were hard pressed financially.

Q. You didn't put any money in the corporation at that time? A. No.

Q. Or later? A. No.

Q. The stock belonged to your father, the stock assigned to you belonged to your father?

A. The stock was in my name so I assumed that it belonged to me.

Q. You did?

A. Yes; it was in my name. It was an understanding so [290] that they could carry on their business.

The Court: You mean that you were the legal owner and the beneficial owner was your father?

The Witness: Yes; I was the legal owner.

The Court: And it really belonged to your father?

The Witness: That is right.

(Testimony of Roy W. Johnson.)

Q. (By Mr. Payne): And you would say the same was true of the stock owned by Lloyd?

A. That is right.

Q. And who were the other officers; Mrs. Potts?

A. Yes.

Q. Did she have some of the stock in her name?

A. I presume she did.

Q. You don't know?

A. I never looked at it.

Q. I call your attention, Mr. Johnson, to Respondent's Exhibit A, in evidence, and to the resolutions attached there, with respect to the dissolution of the corporation, showing J. A. Johnson as president and George Johnson as secretary; can you explain that?

A. No. Not off hand. I don't remember; I don't know just what this is.

Q. I told you it purported to be the certificate of resolution dissolving Western Company in 1942. [291]

A. This looks like dissolution of Western Construction Company, Incorporated, in which J. A. Johnson, George Johnson, and Alvin Johnson are the officers. But apparently during that time in which I was employed on these various jobs they probably changed officers.

Q. You don't remember about that?

A. No; I wouldn't.

Q. You didn't devote your full time to the Western Construction Company, partnership, in 1942, did you? A. No.

(Testimony of Roy W. Johnson.)

Q. You were working elsewhere at that time?

A. Yes.

Q. How much of your time did you devote to Western that year?

A. Oh, part of that time I was out of town and busy so that I don't suppose it was over five per cent.

Q. In 1942? A. Yes.

Q. How much would you say you devoted to the business in 1943? A. 100 per cent.

Q. And in 1944?

A. 100 per cent until I went to Alaska in June.

Q. Of 1944?

A. Yes; the latter part of June. [292]

Q. And after that you devoted no service to Western?

A. Well, through the fall of 1944 and the first part of 1945, it was during the time I was engineering this hydroelectric company and we had joint offices; I was performing my work in Western Construction's offices so that I was more or less aware of what was taking place and was in and out and as has been our custom we discussed the various projects; estimating and prices and so I undoubtedly contributed services during that short time also.

Q. You gave some testimony about Respondent's Exhibit C. You never did actually operate under that partnership, did you, Mr. Johnson?

A. This is the first partnership after dissolution, isn't it? No.

(Testimony of Roy W. Johnson.)

The Court: No; that is before dissolution of the corporation.

Q. (By Mr. Payne): The record shows the corporation was dissolved in 1942, Mr. Johnson, and this is a partnership purportedly entered into in January, 1941.

A. Oh, I see. No, this one never operated.

Q. What was that?

A. This one never operated.

Q. Why?

A. The purpose of that was to get Lloyd back into the [293] company and to increase our joint strength by being banded together under a partnership agreement and we failed to get Lloyd back in at that time.

Q. You heard Lloyd's testimony this morning, didn't you? A. Yes.

Q. That he left and went with Max Kuney over in Spokane against his father's wishes?

A. Yes.

Q. And is that one of the reasons it was determined to form another partnership in 1942?

A. That was one of the reasons; yes.

Q. You testified another reason was that you wanted to bring the girls into the business; is that right? That your father and uncles wanted to bring the girls in?

A. The girls, but particularly the sons-in-law, the girls' husbands.

Q. I see. You testified that you had a younger

(Testimony of Roy W. Johnson.)

sister that did not become a member of the limited partnership? A. That is right.

Q. Do you know why she was left out?

A. She was not of age.

Q. Was it disclosed whether the younger one should or should not be brought in?

A. I am sure that that was discussed because she was [294] also a member of the family and we have a lot of regard for her, but as I recall, the decision was that we wouldn't bring her in until a future date when she became of age.

Q. I see. You testified that when you went to Alaska to work on that job in 1944, you felt like your services would not be seriously missed; is that what you said? A. No.

Q. What did you say?

A. I felt that in the over all long range picture that by my undertaking that work that the benefit derived from that experience would benefit Western Construction Company to a greater extent than if I just stayed and continued full time service with Western Construction Company. In other words, I have always had an interest in hydroelectric work and I have a desire or had a desire that Western Construction Company would get into that type of heavy civil engineering construction and that if I could get the benefit of this experience of designing this hydroelectric project it would be one step toward the ultimate participation of Western Construction Company in that type of construction and work.

(Testimony of Roy W. Johnson.)

Q. Did you discuss with your father the matter of going up there? A. Surely.

Q. Did he want you to go? A. No. [295]

Q. You went anyway? A. I went anyway.

Q. You gave testimony, Mr. Johnson, about Petitioner's Exhibit 15, which I place before you?

A. Yes.

Q. I believe you said that your stated investment in the partnership came from your father and you put it back in at his request?

A. That is right.

Q. Did you give him a note for that amount?

A. Yes.

Q. You testified about the withdrawals?

A. Yes.

Q. I believe on the second page of this exhibit you testified about the large withdrawal in 1945? A. Yes.

Q. Twenty, ten and nine thousand and other smaller amounts? A. Yes.

Q. Something in the neighborhood of forty thousand dollars in one year; is that right?

A. Yes.

Q. How did you go about withdrawing that money; did you talk to your father about it?

A. Yes. [296]

Q. What did he say?

A. He said it is your own money and you have to have it. I told him I needed the money for working capital to perform this construction up there and I had a legitimate and a right use for it

(Testimony of Roy W. Johnson.)

so he said you may use it. It is yours and if you can do more with it in this venture of your own and it will earn more for you that way, then as a part of the receipts from Western Construction, that is up to you. I was interested in using that money where it would earn the most.

Q. Your stated investment was $6,666.66?

A. That is right.

Q. And your stated share of the profits was?

A. Share of the profits?

Q. For 1942? A. $23,743.94.

Q. In addition to that you received your compensation for the services you rendered under the arrangements you testified about?

A. Not in 1942; we didn't receive any salary.

Q. That is right. I should correct that. That amount you received without any service.

A. Without any compensated service.

Q. And then when you went to Alaska you still got your proportionate percentage, based on your stated capital investment? [297]

A. That is right.

Q. I ask you, Mr. Johnson, about the withdrawals in 1943 and 1944, and can you tell from examining this exhibit 11, exhibit 15, the purpose for those withdrawals?

A. Well, these were to pay the income tax.

Q. All of it? A. Well, most.

Q. Substantially all of it?

A. Substantially all of it. Here in 1943 I took

(Testimony of Roy W. Johnson.)

out 3000 dollars of which $2050 was for paying income tax and $950——

Q. What did you use that for, do you remember?

A. I put it in my bank account for running expenses.

Q. All the rest, in 1943 and 1944, were used for federal income taxes?

A. These were all income taxes, yes. Then January 10, 1045, a cash withdrawal that I put in my own funds. I needed that for working capital in my engineering business. Then in March, 1945, I needed the 20 thousand as working capital in my construction work and then here is income tax payments and these are other withdrawals in my construction work.

Q. I want to ask you one other question. You said you took that last job for about five hundred thousand dollars and completed it in 1945? [298]

A. No; it started in 1945. We had hoped to get it completed by December, 1945, but we did not get it completed until the summer of 1947.

Q. Did you make a profit on that contract?

A. No.

Q. A heavy loss?

A. No. Not too bad a loss, but just about even if I don't pay any salary to myself during that time, but that just shows what the construction business is like. One job you probably make good and then the next one you can go for a ride and this was my first one and I ran into some circumstances that

(Testimony of Roy W. Johnson.)

were not anticipated and we worked mighty hard and didn't make any money so that is one of the contingencies of this type of work.

Mr. Payne: That is all.

Mr. Potts: That is all, Mr. Johnson. Thank you.

(Witness excused.)

Mr. Potts: Mr. Winston Johnson, please.

Whereupon,

WINSTON ALBIN JOHNSON

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows: [299]

Direct Examination

By Mr. Potts:

Q. Will you state your full name?

A. Winston Albin Johnson.

Q. Where do you live, Mr. Johnson?

A. 5536 Coniston.

Q. Is that in Seattle? A. Yes, it is.

Q. How long have you lived in Seattle?

A. All my life.

Q. And how long might that be?

A. I am 29 years old.

Q. What is that? A. I am 29 years old.

Q. Now, Winston, you are the son, are you not, of Alvin Johnson? A. Yes.

Q. What has your education been?

(Testimony of Winston Albin Johnson.)

A. I have had three years of college in engineering.

Q. And you specialized in what?

A. Civil engineering.

Q. You did not graduate?

A. No; I didn't.

Q. Was there any reason for that?

A. Yes. When I left school that last summer to work [300] for my father there was a contemplation of war and there was compulsory military training and I belonged to the National Guard and they were trying to get me in and I was on a temporary basis so that I didn't go back to school and then December 7th, Pearl Harbor Day, I decided to wait to see what would happen because they were going to call me.

Q. Did you go into the service?

A. Yes; I did.

Q. What branch?

A. I was in the army engineers.

Q. And how long were you in the service?

A. I was in the service for two months, but I spent that time flat on my back. I had an allergy ailment that didn't allow me active service.

Q. Were you separated from the service?

A. Yes; I received an honorable discharge and I explained what I was doing at home and my ailment was such that if I was in civilian life my ailment didn't bother me and when the court decided that I was to go home, they suggested that I was better off in that capacity at home than to the army engineers.

(Testimony of Winston Albin Johnson.)

Q. When were you separated?

A. In 1942, about in March of 1942.

Q. Now, when you were separated from the service and came home, what did you do? [301]

A. I went to work directly for the Western Construction.

Q. Referring to the limited partnership formed in that year, will you please tell the court the reason for the entering into the limited partnership?

A. Shall I start at the beginning? I have always had the anticipation to work in the construction business.

Q. I am sorry. I just took your education. Will you tell the court whether you had any practical experience in the construction field?

A. Yes, I had. We started very young. I worked with my father before when I was about twelve or thirteen years of age. I did everything from passing water up the line. I did carpenter work and I did labor work and as I got older and more responsible I took more responsible positions and up until the time before I went into the army, I was working for Western Construction at that time in the foreman capacity and on the jobs working and when I finally got out of the army, I went into the office for Western Construction Company. [302]

Q. Now, if you will go back, I wish you would go back to the other question and tell the Court the reason why you entered into this limited partnership.

(Testimony of Winston Albin Johnson.)

A. Well, the purpose of this limited partnership was to secure credit, as has already been stated, and also to hold the three boys and their sisters and their respective spouses to make this organization—for a larger capital, and to have a larger capacity for operating on larger work.

Q. Now, what was your particular interest in it?

A. Well, I had a very bright future in it. The thing I wanted to do—I have always dreamed of the Western Construction Company being probably one of the largest construction companies in the Northwest, and we have always done large work, and we have gotten a good name for ourselves, and I could not see why we could not continue this, the three boys with the help from their sisters and the husbands of their sisters, and even though those husbands, like Mr. Ellingson, worked for us as a foreman, even in that capacity the fact that he was in the family and had an interest in the company, would be better for him and better for the company than other men that just were working for wages and had no other interest. And I still foresee in the future that the three boys and myself and the rest of us are going to continue in this type of work, and I still have got ambitions about this company becoming something again. [303]

Q. How did you get your interest in the limited partnership beginning, first, with the one in 1942?

A. I borrowed the money from my father.

Q. How much did you borrow?

A. $10,000.

(Testimony of Winston Albin Johnson.)

Q. And how did you get it—upon what terms?

A. I signed a short term note for the money.

Q. And did you get the money from your father?

A. Yes, I did.

Q. You actually got the money on your note?

A. Yes.

Q. What did you do with that money?

A. I then saw to it that it was deposited in the firm of the Western Construction Company.

Q. Did you receive any certificate, like a stock certificate, or any other evidence of your interest in the partnership?

A. No. The only thing I knew about it was that I had a note holding over my head to pay for that note.

Q. Now, in negotiating for this note were there any special arrangements about the note, or its payment or non-payment made with your father?

A. Well, my father and the other two brothers are not the type of business men that make ventures like that. I have always had to back up the things I did. If I borrowed the [304] money, I always had to pay them back, and it was understood clearly that this was a venture that I was taking a gamble in, and I would be responsible for this note, because after all, it was explained to me, that the note was for a credit and would actually be used.

Q. Did you have any connection with Coulee Dam?

A. Yes, I did. I worked there myself.

(Testimony of Winston Albin Johnson.)

Q. Did you know what happened over there?

A. Yes.

Q. I mean financially to the partners.

A. Yes, I do.

Q. Or did you at the time that you signed this note? A. Oh, yes.

Q. Now, when you separated from the service and came back home, what did you do for employment?

A. I worked in the office, and did the estimating and the pricing on various jobs. We did a good deal of figuring. We figured as many as two or three jobs a week. Sometimes it was not that many, but I can remember that we did figure that many a week.

Q. When you say, "Figuring," what do you mean by that? Will you explain to the Court what you mean by figuring a job.

A. We took off the quantities and would estimate the actual cost—what we thought that we could do that job for. In other words, with our experience so early in the game, we [305] have learned that a man can do so much work in so many hours' time. And after we had taken off the quantities, the lumber and the steel and the different materials that went into the job, we would sit down and from our past experience we would figure out the cost of what this work would amount to. Most estimators that work for a general contractor only do the estimating. The contractor does not take the man into consideration when he has been figuring the actual

(Testimony of Winston Albin Johnson.)

cost. All that he does is compute quantities, but with our experience we were able to sit down and actually figure out what a man could do per hour on a square foot of form, or digging a hole, and so forth.

Q. Now, is that all the work you did?

A. No.

Q. Estimating, taking off the quantities and pricing?

A. No. After we got the jobs we actually went on the job and helped——

Q. (Interposing): I mean you yourself. Tell the Court just what you, yourself, did.

A. Well, for instance we had no connection with the Navy. Many of our contracts were with the Navy, and I did the corresponding and the writing between the Navy and ourselves, and many of the decisions that we made on the conclusions of jobs, I wrote the final letter of submittal.

Q. Well, tell the Court a little about that. [306] You testify that you wrote letters to the Navy covering the final letter of submittal. Just give the Court some illustrations as to what that covered.

A. Well, as to one particular letter—this is the latest one here—we had a job on the water cross-connection system. I was working with Mr. J. A. Johnson on that particular job, and that job was cancelled after we had already made a start on it. And there had been considerable information acquired, and of course that had to be submitted as to what we had done, and what work was uncom-

(Testimony of Winston Albin Johnson.)

pleted, and what the company had actually put out in the way of making payments. There were actual disbursements. For instance, there would be conflicts between the Navy and ourselves on the job, which every contractor has, and I would enter into the meetings and help discuss the points and arbitrate these points over with the Navy.

It so happened that when a job was finally signed, or we received a job from the Navy, we would appoint a certain individual to take care of that job. Like Mr. J. A. Johnson would be the representative of the three partners in that partnership, and he would take care of most of the details. So his signature would be on most of the papers of any importance. But then there was a board selected all the time when these disputes would come up. When there was some question about the cost or a particular operation, or some [307] question of an extra on the job, or more work added to the job, this board would meet and come to an understanding as to terms in the amount of money.

Q. When you talk of "Board," whom are you talking about?

A. The Navy represented itself by three members, and we would represent ourselves by one of our members, and then myself.

Q. Is that what you mean by "The Board"?

A. Yes, sir.

Q. All right. Go ahead.

A. During this particular time we had other estimators—another estimator in our office, but he

(Testimony of Winston Albin Johnson.)

was not taken into these board meetings, or into any of these directors' meetings—not directors' meetings, but meetings with the Navy. In other words, he was purely a man for figuring quantities, and that was his job, and when 4 o'clock came around, he went home. And I myself received an actual salary at the end of each week to get along on.

Q. What was that?

A. It was about $80 a week, and I was not satisfied with it, but I realized that I could watch my investment this way and make my investment grow. And I spent many, many hours outside of the office that I was never paid for. It was not on an hourly rate. It was by the week. and it was enough so [308] that I could get along, but I did spend a good deal of time after office hours, and Saturdays and Sundays and times when everybody was home or going fishing, or doing other things like that.

Q. And that was with or without compensation?

A. With no compensation.

Q. What about sub-contracts on these jobs while you were in the office?

A. Well, it was up to myself to arrange so that we could get the proper sub-contracting. That was quite a job in itself, but most of our bidding depended upon a good sub-contract. A good deal of the work was to see that I got the proper figures on sub-contracts.

Q. And who had charge of letting the sub-contracts on the jobs that you have testified you took off the quantities?

(Testimony of Winston Albin Johnson.)

A. Well, myself. We had figured it, and we knew it. So we were the ones which determined which ones it would be—which electrical contrtctor and which plumber it would be.

Q. How long, Winston, after you separated from the Service were you with the limited partnership—the Western Construction Company?

A. I have been there since that time. In fact, I was there up to about—oh, I guess to about a year ago, and we at that time started another organization.

Q. The Glacier Construction Company, [309] Incorporated?

A. That is right.

Q. Referred to here? A. Yes, sir.

Q. And now, on this second limited partnership, formed the next year, will you tell the Court whether any of your sisters were taken in into the second partnership?

A. Yes. My youngest sister, Vedola Kent, was taken in at that time.

Q. Will you tell the Court the circumstances under which she was admitted to an interest in the limited partnership?

A. Well, my sister Vedola kind of felt that she was out of the picture, and she felt that the opportunity that had been given Elsie and myself was not given her, and with the pressure brought to bear that she put upon us, why my sister Elsie and myself decided that we would allow her to come into the partnership. And we did this, by receiving

(Testimony of Winston Albin Johnson.)

our $10,000 notes back and we wrote out another note for less money. And by that way we were able to get our sister in and allow her to have an equal opportunity, the way that we did.

Q. And what was the amount of these second notes?

A. Well, it was an easy amount to know—it was $6,666.66.

Q. And what about Vedola? Was she married at that time? [310]

A. When she signed the note she was engaged to a young man who was in the Service. He was a Chief in the Navy.

Q. And what was her age?

A. She was 21. She was of age. We did not allow any of the limited partners to come in until they were of age, so that they would have some responsibility.

Q. What was your age when you signed the note in 1942?

A. I must have been—I was born in 1919.

The Court: 23?

The Witness: 23—yes. Thank you.

Q. (By Mr. Potts): Now, go on from the second partnership, and you have told us about the Glacier Construction Company, Incorporated.

A. Yes.

Q. Did you subscribe for any stock in this construction company?

A. In the Glacier Construction?

Q. Yes. A. Yes, we did.

(Testimony of Winston Albin Johnson.)

Q. Well, did you? A. Yes, I did.

Q. And who else?

A. My sister—both sisters, and my father and my mother. [311]

Q. And did you pay for that stock?

A. We paid for it—yes, we did.

Q How much did you pay for your stock in the Glacier Construction Company?

A. Well, the exact figure I don't know, but it was around $37,000.

Q. Where did you get the money?

A. I got it from my interest in the Western Construction Company. I left some of it there, too, by the way. I didn't take it all.

Q. And did you pay that in cash to the Glacier Construction Company, Incorporated?

A. Yes, we did.

Q. Do you know whether your sister Vedola did the same? A. I am sure that she did.

Q. And Elsie Kent? A. Yes.

Mr. Potts: Would you mark this, Madam Clerk, as an exhibit?

The Court: It will be marked for identification Petitioner's Exhibit 16.

(Document above referred to marked Petitioners' Exhibit 16 for identification.)

Q. (By Mr. Potts): I show you, Winston, Petitioners' Exhibit 16 marked [312] for identification. Will you examine that exhibit and tell the Court, if you can, what it is.

(Testimony of Winston Albin Johnson.)

A. It is a list of my investments and my withdrawals.

Q. And that is supported by these checks (indicating), is that right?

A. Yes. These are the cancelled checks.

Q. All right. Now, would you give the Court or, refreshing your memory from this exhibit, if necessary, the amounts of your investments, earnings, withdrawals and dates.

A. On May 7, 1942, I made the investment of $10,000.

On December 31, 1942, the share of the profits was $35,615.92.

June 30, 1943, the share of the profits was $17,-918.80.

On June 30, 1943, the reduction in the investment was $33,330——

Q. (Interposing): Are you sure that it was $33,000? A. I beg your pardon. $3,333.33.

On December 31 the share of the profits was $7,718.17;

On December 31, 1944, the share of the profits was $2,767;

On December 31, 1945, the share of the profits was $7,591.66, making a total $78,279.22.

Q. Now, will you give me the withdrawals?

A. The withdrawals were as follows:

March 15, 1943, $4,434.76; [313]

June 15, 1943, $4,434.77;

September 13, 1944, $4,434.76.

Q. May I interrupt you to ask if those particu-

(Testimony of Winston Albin Johnson.)

lar withdrawals were for the purpose of paying the income tax on your earnings?

A. Yes, they were—these withdrawals were.

September 13, 1943—I said September 13, 1944, but it should be September 13, 1943, $4,434.76.

Q. And now, will you give the amount and the purpose of the next withdrawal?

A. On October 25, 1943, I drew out $275, which was for the purpose of purchasing an engagement ring.

Q. Just give us the next one, if you will.

A. On December 9, 1943, to the Collector of Internal Revenue, $4,434.76.

Q. And the next one.

A. January 6, 1944, my engagement was a success, and I went on a honeymoon, and I drew $1,000.

Q. All right.

A. On May 13, 1944, for the Collector of Internal Revenue, $600;

May 15, 1944, for the Collector of Internal Revenue, $1,280.51;

On May 15, 1944, for the Collector of Internal Revenue, $12.80; [314]

On June 14, 1944, for the Collector of Internal Revenue $600; and on June 20, 1944, I had a withdrawal of $508.50, which was part of my mother's funeral expenses.

Q. Your mother and father were separated some time before her death?

A. Yes, they were. And also on June 13, 1944, additional funeral expenses are $525.

(Testimony of Winston Albin Johnson.)

Q. Will you tell the Court—well, I think these speak for themselves. Go ahead.

A. On June 12, 1944, another additional amount for the funeral expenses was $25.

On September 13, 1945, for the Collector of Internal Revenue, $600;

On June 11, 1945, for the Collector of Internal Revenue, $600;

On March 13, 1945, for the Collector of Internal Revenue, $1,672.08;

And on March 23, 1945, a cash withdrawal of $880;

And on December 21, 1945, a cash withdrawal of $200.

Q. Those were your personal withdrawals?

A. Yes, they were, making a total of $26,517.94.

Q. Will you take the next year?

A. On December 31, 1946, my share of the profits was then $28.22. Do you want this as well (indicating)?

Q. No, that is just a subtotal. [315]

A. On February 14, 1946, there was a withdrawal of $281.17; and on March 2, 1946, I purchased a lot, and I withdrew $2,700.

Q. You mean that that was a building lot?

A. Yes, sir.

Q. A piece of real estate?

A. It was a lot on which we built a house.

Q. Yes.

A. On March 14, 1946, I withdraw $300 personally, and on June 18, 1946, I made a cash withdrawal of $7,000.

(Testimony of Winston Albin Johnson.)

On December 31, 1946, I made a cash withdrawal of $500.

On March 14, 1947, I made a personal withdrawal of $36,509.79.

Q. You say that you purchased a piece of real estate, "On which we built a house." Did you mean the partnership built a house on it, or that you, personally, did that?

A. Well, personally.

Mr. Potts: We will offer Petitioners' Exhibit 16 in evidence.

Mr. Payne: No objection.

The Court: It will be received as Petitioners' Exhibit 16.

(Document heretofore marked Petitioners' Exhibit 16 for identification, received in evidence.) [316]

PETITIONERS' EXHIBIT No. 16

Winston Johnson

Jan. 1942 to Dec. 31, 1945.

5/ 7/1942	Investment	$10,000.00
12/31/1942	Share of profits	35,615.92
6/30/1943	Share of profits	17,919.80
6/30/1943	Reduction in investments	3,333.33
12/31/1943	Share of profits	7,718.17
12/31/1944	Share of profits	2,767.00
12/31/1945	Share of profits	7,591.66
		$78,279.22

(Testimony of Winston Albin Johnson.)

Withdrawals

3/15/1943	Collector of Internal Revenue	$ 4,434.76
6/15/1943	Collector of Internal Revenue	4,434.77
9/13/1943	Collector of Internal Revenue	4,434.76
10/25/1943	Cash to buy engagement ring	275.00
12/ 9/1943	Collector of Internal Revenue	4,434.76
1/ 6/1944	Cash used on honeymoon	1,000.00
4/13/1944	Collector of Internal Revenue	600.00
5/15/1944	Collector of Internal Revenue	1,280.51
5/15/1944	Collector of Internal Revenue	12.80
6/14/1944	Collector of Internal Revenue	600.00
6/20/1944	Johnson and Sons Funeral Parlors (Mother's funeral)	508.50
6/13/1944	Acacia Memorial	525.00
6/12/1944	Rev. Emil Friborg	25.00
9/13/1945	Collector of Internal Revenue	600.00
1/11/1945	Collector of Internal Revenue	600.00
3/13/1945	Collector of Internal Revenue	1,672.08
3/23/1945	Cash withdrawal	880.00
12/21/1945	Cash withdrawal	200.00
		$26,517.94

Winston Johnson

Jan. 1, 1946, to Dec. 31, 1947.

Balance forwarded		$78,279.22
12/31/1946	Share of net profit	28.22
		$78,307.44
Amount of withdrawals brought forward		$26,517.94
2/14/1946		281.17
3/ 2/1946	Money used to purchase lot for residence	2,700.00
3/14/1946		300.00
6/18/1946	Cash withdrawal	7,000.00
12/31/1946	Cash withdrawal	500.00
3/14/1947	Personal withdrawals	36,509.79
		$73,808.90

Admitted May 25, 1948.

Q. (By Mr. Potts): I will just ask you generally, did you ever attend any meeting of the lim-

(Testimony of Winston Albin Johnson.)

ited partners, as a part of the work of the partnership? A. No.

Q. Do you know whether there was any committee, or board, or trustees, directors or anything of the kind ever elected? A. No, there was not.

Q. Do you have any evidence of your interest in this partnership other than the articles of co-partnership? A. Just that. No other evidence.

Mr. Potts: Your witness.

Cross-Examination

By Mr. Payne:

Q. Mr. Johnson, you testified on direct that the purpose of the limited partnership was to obtain larger capital; and larger capacity for doing business, is that right? A. Yes.

Q. In what way did that enable the business to get larger capital?

A. Well, I should probably have said larger credit. I mean to say larger credit.

Q. Now, what do you mean by that? You mean by the notes which the children gave to their fathers? [317] A. Yes.

Q. That is all you mean by that?

A. Well, credit also in the fact that we were a larger organization. We had more members that did more vital work that made us—well, I used to look at the Austin Company, and looked at the large force that they had, and the large capacity that they had for doing work, and with our members in

(Testimony of Winston Albin Johnson.)

the firm, why we could do the same. We had a larger standing force of men who were actually interested in the company.

Q. You didn't ever use your personal credit for purposes of the partnership, did you?

A. How do you mean?

Q. Well, outside of the note you gave your father.

A. I still don't understand. Did I use my notes——

Q. (Interposing): In the operation of the partnership business, you did not use your personal credit outside of the giving of your note to your father for your stated investment.

A. I think that that is right.

Q. How was the capacity enlarged? You were working with your father before 1942, weren't you?

A. Yes, sir. Well, if I hadn't gotten into the company I would not have stuck around. I was not interested in being with this company unless I actually had a direct [318] interest, the way I have now. I would have gone some place else and worked there, and the only reason why I stayed around was for my own interest.

Q. Now, it did not enlarge the capacity by getting Lloyd's services, did it?

A. Yes, it did. It increased by my being in it too.

Q. What?

A. It increased my capacity by having me and Lloyd and Roy in the company.

(Testimony of Winston Albin Johnson.)

Q. You have heard the testimony that Lloyd has given about his work with Kuney-Johnson, beginning in 1941? A. Yes.

Q. And up to the present time? A. Yes.

Q. And that he never devoted a considerable time to the partnership.

A. But he did. I mean, it was considerable—the amount of work that he did for us was so valuable that we could not have gotten along without it. We used it. It was some information that we could never have gotten any place else. We did use his capacity.

Q. You did get along without him before that, didn't you?

A. Well, yes, but we actually used him when we needed him. [319]

Q. You know that he spent some time away from Seattle, and during that time the partnership got along, didn't it?

A. Well, that is true of any of the members. My father went on hunting trips up to Canada and left everything in my hands, for instance, and we managed to get along all right. It was only for a short time.

Q. Now, you have heard the testimony of Roy, that he devoted about a year and a half to the partnership all told?

A. Yes. That is a very good service, however.

Q. How about the girls. Let me see. There were seven girls in the first partnership, I believe, is that right? A. That is right.

(Testimony of Winston Albin Johnson.)

Q. That enlarged the capacity just in the division of the income only, didn't it?

A. No. I think that our testimony will show that the interest or the capacity was increased by the fact that each of the girl's spouses was drawn closer to the company, and we were able to—there were several members there—like Mr. Ellingson, that actually came to work for us and had an interest in the company.

Q. Mr. Ellingson worked just as a regular carpenter, didn't he? A. He was a foreman.

Q. What about your sister Mrs. Keil—what is her name? [320] A. Elsie Keil.

Q. Is she your sister? A. Yes.

Q. How did that enlarge the capacity of the partnership?

A. Well, Mr. Keil is a painter by trade, and a very good one, in fact. I understand that he is working for the Jacobson Company—for Jacobson, a painting contractor here in the city at the present time, and his work is connected with our work, and he could at any time been of some help to us.

Q. But he never did work with you?

A. He never did.

Q. And Elsie never did?

A. Elsie worked for the company at times. She has.

Q. When?

A. She worked for my father, taking stenographic work from him, and so forth. And I know

(Testimony of Winston Albin Johnson.)

that she has helped in the office, and so forth, without any consideration whatever at all.

Q. When?

A. The exact years I cannot say—I know it was, however, during our Coulee Dam experiences, and I think that even since the partnership has been organized I have seen her in the office. [321]

Q. You have seen her in the office?

A. Yes.

Q. How long did the marriage between her and Keil continue?

A. Well, I am not so sure, but I think it was about eight years, or somewheres near there.

Q. How long? A. About eight years.

Q. Eight years? A. I am not sure.

Q. Do you know whether or not they were divorced? A. Yes, they were.

Q. When?

A. Well, it was after the arrangements for this partnership were made, I can say that, but the exact date I don't know.

Q. Do you know whether he knew about your sister signing the note? A. Oh, yes.

Q. Was he asked to sign it, do you know?

A. No, because it was not necessary. If she signed it he was as much responsible as she was for that note.

Q. Is that your understanding? A. Yes.

Q. Is that your understanding of the laws of the State [322] of Washington? A. Yes.

(Testimony of Winston Albin Johnson.)

Q. Do you know what property they had at the time Elsie signed that note?

A. No, I really don't know. He was working steady. He had been working for this company for many years, and he was a sort of a foreman, or something for them.

Q. Do you know whether the question came up about that interest when they were divorced?

A. Well, I think—you mean the interest that Elsie had in the company?

Q. Yes.

A. Yes, I think that he—well, I am not too sure, but I think that he settled that. He turned over everything that he had to her.

Q. Did you ever talk to your father about that?

A. No.

Q. You never did? A. No.

Q. You say that they settled it. Do you think that Mr. Keil got any of it?

A. Well, up to the time of his divorce he was benefiting by it—yes. He got some of the money.

Q. How? In tax payments?

A. No, no. Elsie paid a lot of her personal [323] bills from her interest.

Q. Do you know that? A. Yes.

Q. Where did you get your information?

A. I heard it from her—from Elsie.

Q. Is Elsie in the Courtroom?

A. She is not.

Q. She is not available, is she?

(Testimony of Winston Albin Johnson.)

A. No, she is not. She is in the hospital, flat on her back.

Q. But when they came to divide their marital—when they came to dissolve their marital relationship, you do not think that he got anything?

A. No, he did not. He signed a waiver of all the rights he had with Elsie.

Q. Well, now, you testified that you knew Elsie got some money to pay bills with. Do you know when?

A. Well, yes. I can say it this way that I know that Rudy—Elsie's husband—made his return with Elsie, and I believe the Western Construction Company paid his income tax.

Q. So that is the way you say that he got the benefit? A. Yes, I think so.

Q. As a matter of fact, Elsie never did draw much of anything, did she, in 1942, 1943 or 1944?

A. Well, I do not know about her personal affairs. [324]

Q. All right. What kind of work did you do for the partnership in 1942?

A. I have explained it very well. I was——

Q. (Interposing): You were very general. You didn't even identify it as to a year so far as I recall. Now, what were you doing in 1942?

A. Well, let me see. In 1942 I think—I was trying to figure on what job I was working on.

Q. Weren't you working in the office at the beginning?

(Testimony of Winston Albin Johnson.)

A. Yes. Part time, and part time on the job at the very beginning.

Q. What kind of work did you do in the office?

A. Estimating and office work, like I explained, figuring computations.

Q. You don't do your estimating in the office, do you? A. Oh, yes.

Q. Do you? A. Yes.

Q. That is what I wondered about. Didn't you drive a truck part of the time?

A. Well, I will tell you this, we did everything. My father and the rest of them drove trucks so that the unions were after them. We had so much trouble with getting men to be able to do things that we wanted them to do, that I know that my dad himself once in a while had to jump into a truck [325] and get it moving so that we could expedite our work.

Q. How much of your time in 1942 would you say that you did estimating, and how much of your time on other work?

A. Oh, about half and half.

Q. What about 1943?

A. I believe I was in the office most of the time, but then in 1943 we were building a flight service building in Renton for the Boeing Aircraft Company, and I helped supervise that work, and I was in the office too.

Q. And how about 1944 and 1945?

A. I believe I was entirely in the office all those times.

(Testimony of Winston Albin Johnson.)

Q. Were those estimates done on jobs that your father had supervision of?

A. No. Every job. We figured all of them.

Q. You heard the testimony of Roy that each one of the general partners had supervision of certain parts of the work. Now, is that your understanding? A. Yes.

Q. And the work that you did would be under the general direction of one of the general partners?

A. Yes, that is right.

Q. Who checked your work?

A. Well, nobody did.

Q. Nobody checked your work? [326]

A. Why would they?

Q. I am just asking you. No one checked your work you say? A. No one checked my work.

Q. Now, you heard Roy say that his work was checked by his father, didn't you?

A. Yes, but I do not think that he meant just exactly that. To go over his work and checking it would be doing the thing twice.

Q. Well, were you on a different plane than Roy? A. No, we were put on the same plane.

Q. How much were you getting in compensation in 1941, do you remember?

A. Oh, about the same. It was about $80 a week, I think.

Q. From the partnership? A. Yes, sir.

Q. Did that scale continue during 1942, 1943, 1944 and 1945? A. Yes, I think it did.

(Testimony of Winston Albin Johnson.)

Q. Did you get an increase?

A. I seem to remember that my checks were $90 a week at one time there. I think towards the end it went to $90 a week.

Q. Wasn't $80 a week a fair salary in 1941 and 1942? [327]

A. Well, not for what I was doing. In other words, I was there merely because of my interest.

Q. You didn't have an interest in 1941. So why did you stay there at $80 a week?

A. Because I contemplated going into the firm.

Q. Did anybody offer you a job?

A. Why, sure. I think that I could go anywhere any get more money for what I was being paid for.

Q. Where?

A. From any contractor in the city. I will tell you this, estimators were hard to get. You could get men who would not take an interest in their work, but to get good men that would actually put in more than ordinary business hours, that was a hard thing to do.

Q. Did you get a better offer?

A. I never went out to look for a better offer.

Q. How many estimaters did the Western Construction Company have?

A. There were—they would come and go. They lasted about six months maybe at a time, and then there would be another one.

Q. Can you remember any in 1942?

A. In 1942 I think that we had a George Piper. I am not sure. I think it was Mr. George Piper.

(Testimony of Winston Albin Johnson.)

Q. How much did the partnership pay [328] him? A. About the same.

Q. The same as you? A. Yes, sir.

Q. Do you remember how many you had in 1943, or whether you had any?

A. We had—let me see. We had another fellow, Ellinsong—I forget his name.

Q. Well, without going into details, did you pay them about the same scale?

A. Yes, just about the same scale. I believe that they were—I believe that they were paid better than I was.

Q. You don't know specifically, however?

A. No, not offhand, no.

Q. Did some of them have better qualifications than you had? A. No.

Q. Who fixed this amount of salary that you were paid there?

A. Well, it was amounts that I could get along on, and I didn't want the company to be held up on both ends.

Q. That is what you said on direct examination, Mr. Johnson, but who fixed that? Did the general partners fix the compensation of everybody who worked for the partnership?

A. Yes, they did. [329]

Q. Did you ever ask them for a raise?

A. I never did. I am not meaning that I was satisfied with that. I did that because of the interest that I had.

(Testimony of Winston Albin Johnson.)

Q. You said that Vedola, your sister, signed her note before her marirage. A. Yes, I did.

Mr. Payne: That is all.

Mr. Potts: Madam Clerk, would you mark this, please?

The Court: Mark this for identification as Petitioners' Exhibit 17.

(Document above referred to marked Petitioners' Exhibit 17 for identification.)

Redirect Examination

By Mr. Potts:

Q. Counsel has asked you about your sister Elsie. What is her present name?

A. It is Elsie F. Mathewson.

Q. And where is she residing now?

A. She is at Sea-View, Washington, now.

Q. And Counsel asked if she could be here. Showing you Petitioners' Exhibit 17 marked for identification, will you tell the Court what that is?

A. This is a doctor's opinion that my sister is in——

Q. (Interposing): Just tell us what it is. It is a doctor's what?

A. It is written on a prescription blank really, but it is a doctor's statement that Elsie——

Q. (Interposing): It is a doctor's statement, is that correct? A. Yes, sir.

Mr. Potts: I will show it to Counsel. (Handing

(Testimony of Winston Albin Johnson.)

document to Mr. Payne.) We offer this in evidence if the Court please.

Mr. Payne: No objection.

The Court: It will be received as Petitioners' Exhibit 17.

(Document previously marked Petitioners' Exhibit 17 for identification, received in evidence.)

Mr. Payne: I would just like to say, Your Honor, knowing that condition, that is the reason that I asked this witness the question that I did about his sister, because I understood that he was personally familiar with some of the phases of her activities.

The Court: I see.

Mr. Payne: And knowing that she would not be here, that is the reason I asked him.

Q. (By Mr. Potts): Just one thing. I think Counsel asked you if there [331] were seven girls in the first partnership. Is that correct?

A. I didn't stop to count them up.

Q. Will you tell us how many there were in the first partnership?

A. I will have to use my fingers here.

Q. Were there four in the first partnership?

A. Yes.

Q. And seven in the second?

A. That is it.

Mr. Payne: I stand corrected on that. That is right Your Honor. I was thinking of the second partnership.

The Court: All right.

Mr. Potts: Will you step down then, Winston.

(Witness excused.)

Mr. Potts: I would like to recall Mr. Lloyd Johnson on a brief examination of something that I overlooked.

The Court: Very well. You may do so.

Whereupon,

LLOYD W. JOHNSON

a witness previously called on behalf of the Petitioners, was recalled for further examination, having been previously sworn, testified as follows:

Direct Examination

By Mr. Potts:

Q. You are Lloyd W. Johnson, are you [332] not? The same Lloyd W. Johnson who was on the stand before? A. Yes, sir.

Q. And you have been sworn previously, is that right? A. Yes, sir.

Q. Lloyd, while you were with Kuney, as you have testified, did you have any business relationships with Western Construction Company as representing not yourself alone personally, but the firm of Kuney-Johnson?

A. Yes. We had several deals.

Q. Will you describe them to the Court?

A. The Kuney-Johnson Company would work with the Western Construction Company. We bid on an Army pier down here at Pier D, I think that

(Testimony of Lloyd W. Johnson.)

is the designation of it, and we bid that as a joint venture with the Western Construction Company.

Q. Do you recall about what year that might have been?

A. That must have been about 1943, maybe.

Q. Were there any other bids made that you remember between you?

A. We several times approached the Navy on some what they call CPFF jobs, or cost plus fix fee jobs, where we had to combine our resources to get this work. The Navy, it seemed, at that time was reluctant to just give one contractor, unless he was a very large concern, some of this work that had to be done in a great hurry. One job I remember specifically [333] was the Lighter-than-Air Base at Tillamook, Oregon. We received a lot of consideration on that job, right up until the end, when the Sound Construction Company got the job.

Q. The point is, was the Western Construction Company—the limited partnership—involved with Kuney-Johnson——

A. (Interposing): Yes, that is correct.

Q. (Continuing): ——in the attempt to get these jobs?

A. That is correct. The Western Construction Company and the Kuney-Johnson Company combined forces.

Q. And who was directing that effort to get those jobs?

A. I was directing most of the effort.

Q. Now, you mentioned about how two com-

(Testimony of Lloyd W. Johnson.)

panies would get together for the purpose of getting these Navy jobs. A. Yes, that is correct.

Q. Would you tell the Court whether or not in that connection any kind of a report, or statement, or representation was required to be made to the Navy as to personnel?

A. We had to qualify our—you just don't walk in to the Navy and tell them that you want to take a four million dollar job. You have to present your qualifications. These qualifications were all presented to the Navy on a combined statement listing all personnel that were to be available for the job, and the type of work that they did, and the [334] experience of each one of them and the record behind each one. It is a pretty comprehensive report that is required by both the Army and the Navy for any work of that nature.

Q. And by that, did it not include the educational background of the men?

A. Yes. It included all their qualifications, educational, experience record, and everything.

Mr. Potts: Your witness:

Recross-Examination

By Mr. Payne:

Q. You said that you directed that joint venture work which Kuney-Johnson and Western took together.

A. You misunderstood me. We attempted—this was one of our successful ventures. We attempted

(Testimony of Lloyd W. Johnson.)

to get joint venture work together, and we didn't on Pier B, or on Pier D, rather, because we were the second low bidder. The General Construction was the low bidder. And on the Tillamook Air Base we received consideration right up to the very last, and then the job was finally awarded to Sound Construction Company and Peter Kewitt.

Q. So you never did take any work together?

A. We never did take any work together, but we did the preparatory work together.

Q. You said that you listed the personnel to the Navy. That means just the partners, is that [335] right?

A. We listed all the personnel that we had.

Q. What do you mean by that, the supervisors, the estimators and engineers and all the personnel working with the respective partnerships?

A. We listed all the people that were available from both of our organizations.

Q. I see. That would be available on that particular job. Whether on a salary basis or whether partners——

A. (Interposing): That is right.

Q. Or no matter what the basis was?

A. Yes, sir.

Mr. Payne: That is all.

Redirect Examination

By Mr. Potts:

Q. Do you remember whether or not Roy John-

(Testimony of Lloyd W. Johnson.)

son and/or Winston Johnson were listed on any of those personnel reports?

A. Yes, I am positive that they were. I am positive that Roy, Winston and myself were. There was no reason why we should leave them off.

Mr. Potts: Thank you. That is all.

Mr. Payne: That is all.

The Court: We will now recess until 2 p.m.

(Whereupon, an adjournment was taken at 12:20 o'clock p.m., May 25, 1948, to 2 o'clock p.m. of the same day.) [336]

2 P.M., May 25, 1948

(Whereupon, the trial was resumed pursuant to adjournment.)

Mr. Potts: I will call Mr. Ogg.

The Court: Very well.

Whereupon,

WESLEY OGG

called as a witness on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. Will you state your full name, please?

A. Wesley Ogg.

Q. Where do you reside, Mr. Ogg?

A. Seattle, Washington.

Q. What is your occupation or profession?

(Testimony of Wesley Ogg.)

A. I am Credit Manager for the Seaboard Branch of the Seattle First National Bank.

Q. Now, I believe I interviewed you the other day, did I not? A. That is correct.

Q. And asked you to bring with you certain statements? A. That is correct.

Q. Have you those statements with you?

A. Yes. (Handing document to Mr. Potts.) [337]

Q. Now, have you another copy of this? May we use this and introduce this in evidence?

A. You may do that.

Q. This is the original duplicate, is it?

A. That is the original.

Mr. Potts: I will have this marked for identification.

The Court: It will be marked for identification Petitioners' Exhibit No. 18.

(Document above referred to marked Petitioners' Exhibit 18 for identification.)

Q. (By Mr. Potts): Showing you Petitioners' Exhibit No. 18 marked for identification, I will ask you to state to the Court what that exhibit consists of.

A. This is a financial statement given us and signed by Mr. J. A. Johnson as part of our confidential record files, in support of any accommodations of credit, or otherwise, he might request from us.

Q. And this is dated what?

(Testimony of Wesley Ogg.)

A. This is dated August 20, 1945, and was submitted to us on or about that date.

Mr. Potts: I would like to offer at this time, if the Court please, Petitioners' Exhibit 18 for identification in evidence. [338]

Mr. Payne: No objection.

The Court: It will be received as Petitioners' Exhibit No. 18.

(Document heretofore marked Petitioners' Exhibit 18 for identification received in evidence.)

Mr. Potts: I might state to the Court that the purpose is on account of this item of $20,000, accounts and notes due from friends and relatives, I believe is the way that the statement reads.

The Court: Yes. All right.

Mr. Potts: Your witness.

Cross-Examination

By Mr. Payne:

Q. Are you personally familiar with the facts and circumstances relating to that statement?

A. No, I am not.

Q. You just know that it came from the files of the bank? A. That is correct, yes.

Q. Do you know whether any personal investigation was ever made with reference to this $20,000 item listed as accounts and notes receivable from relatives and friends?

A. Not to my knowledge.

(Testimony of Wesley Ogg.)

Q. This purports to be the statement of J. A. Johnson, [339] does it? A. Yes.

Q. Do you know whether any loan was made based on this statement?

A. I don't know. I didn't check the records.

Q. You do not know whether a loan was even asked for, do you, whether in the name of the partnership or in the name of an individual?

A. No, I do not.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.)

Mr. Potts: I will call Mr. Lake.

The Court: Very well.

Whereupon,

M. B. LAKE

called as a witness on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. Will you state your name and address, please?

A. My name is M. B. Lake, and I reside at 2822 - 31st Avenue South, Seattle, Washington.

Q. What is your occupation or business, Mr. Lake?

(Testimony of M. B. Lake.)

A. I am assistant comptroller of the Seattle First [340] National Bank.

Q. At my request did one of the officers of the bank ask you to be ready to bring to us today some records in the possession of the bank?

A. I brought with me the partnership signature cards requested by yourself.

Q. Thank you. And was your bank kind enough——

A. (Interposing): There are copies of them here also.

Q. (Continuing): ——to have duplicates made?

A. Yes, sir.

Q. So that we can have them identified?

A. Yes.

Mr. Potts: I think that we can staple these all together as one exhibit.

The Court: That will be marked for identification as Petitioners' Exhibit 19.

(The documents above referred to marked Petitioners' Exhibit 19 for identification.)

Mr. Potts: Thank you, your Honor, and the exhibit will consist of two cards and four sheets of paper.

The Witness: I think you have two copies of each one of those letters there.

Mr. Potts: Oh, are there two copies?

The Witness: Yes.

Mr. Potts: I am sorry. [341]

The Court: It is not necessary to have but one.

Mr. Potts: That is right, all we need is just one.

(Testimony of M. B. Lake.)

Then the exhibit will consist of two cards and two letters, if your Honor please.

The Court: Maybe the two cards are duplicates—are they?

Mr. Potts: No, they are not.

The Court: All right.

(Document above referred to marked Petitioners' Exhibit 19 for identification.)

Q. (By Mr. Potts): Mr. Lake, showing you the exhibit—these two letters and two cards have been compared, have they not, with the originals?

A. That is right.

Q. And they are a true and correct copy thereof?

A. Yes, sir.

Q. Now, tell the Court, if you will, what the two cards are, first.

A. This is a partnership checking account signature card of the Western Construction Company, signed or carried with the authorized signatures of George Johnson, Albin Johnson and J. A. Johnson.

Q. And the date?

A. The account was opened April 17, 1934; was closed [342] July 17, 1935; was reopened July 24, 1935, and was finally closed on March 17, 1947.

Q. And at that time, in 1947, were there any cards—was there another card with authorized signatures filed——

A. (Interposing): That is right.

Q. (Continuing): ——with your bank?

(Testimony of M. B. Lake.)

A. That is right. The signature card was merely a cancellation of authorization, and another signature card was substituted on the account. Also there was a partnership checking account, in which the signatures of Albin Johnson or Winston Johnson and George Johnson and J. A. Johnson were authorized on the account.

Q. Is that the only difference, the signature *or* Winston Johnson was added.

A. That is right. As I understand it, this next account that was opened, George Johnson and J. A. Johnson must sign all checks. In other words, three signatures are required on the second signature card, which was given effect from March 18, 1947, until the account was closed on September 19, 1947.

Q. And up to that time what signatures had been authorized to sign checks for the Western Construction Company, a co-partnership?

A. George Johnson, Albin Johnson and J. A. Johnson, with instructions to pay on their [343] signature.

Mr. Potts: We offer, if the Court please, Petitioners Exhibit 19 in evidence.

Mr. Payne: No objection.

Mr. Potts: Consisting of the two cards.

Q. (By Mr. Potts): Would you explain to the Court what the two letters were accompanying these cards?

A. The two letters relate to the transmittal of the signature card for our authorization file. The first letter is dated 1932 and pertains to a prior group

(Testimony of M. B. Lake.)

of signatures on this account. This letter dated April 26, 1934, pertains to the account which was opened on April 17, 1934, and I believe the letter itself is self-explanatory.

Mr. Potts: Yes.

The Court: It will be received as Petitioners' Exhibit 19.

(Document heretofore marked Petitioners' Exhibit 19 for identification received in evidence.)

Mr. Potts: Your witness, Mr. Payne.

Cross-Examination

By Mr. Payne:

Q. Did I understand you to say, Mr. Lake, that when that account was reopened—I will strike that question. Did I understand you to say that on the second card [344] authorizing Winston Johnson to sign after that date, the signature of all three was required on checks?

A. That is right, sir—yes, sir.

Q. And how long did that continue?

A. The account was closed September 19, 1947.

Q. When was the signature card with Winston's name on it given? A. March 18, 1947.

Mr. Payne: I see. That is all, thank you.

Mr. Potts: That is all. Thank you very much for coming up here.

(Witness excused.)

Mr. Potts: I will call Mrs. Gustafson.

Whereupon,

MRS. RACHEL DORIS GUSTAFSON

was called as a witness on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. Will you state your full name, please, Mrs. Gustafson?

A. Rachel Doris Gustafson.

Q. Where do you live, Mrs. Gustafson?

A. Route 3, Box 440, Issaquah, Washington.

Q. How long have you been a resident of King County, [345] State of Washington, Mrs. Gustafson? A. 39 years.

Q. And are you the daughter of George Johnson? A. Yes, I am.

Q. Are you married? A. Yes, I am.

Q. And what is your husband's name?

A. Leonard Gustafson.

Q. Now, Mrs. Gustafson, your mother's name was Amanda Johnson, wasn't it?

A. That is right.

Q. And can you tell the Court when she died—approximately?

A. Yes. She was killed by a hit and run driver in September, 1920, I think it was.

Q. September, 1920? A. Yes, sir.

(Testimony of Mrs. Rachel Doris Gustafson.)

Q. And what children did she leave at that time?

A. I was the oldest; and Lloyd and Bernice.

Q. Now, Mrs. Gustafson, directing your attention to—first of all, tell us when were you married?

A. I was married in March of 1928.

Q. You were married in March of 1928?

A. Yes, sir.

Q. What was Mr. Gustafson doing at the time of your [346] marriage? What was his work?

A. He was going to school.

Q. And what course was he taking?

A. Well, he was taking a pre-medic course, and then when we were—he had, I think, a year and a half or something like that in pre-med, and then when we were going to be married, my dad talked to him, and we talked it over and suggested that he might change to engineering. So he graduated in engineering three years after we were married.

Q. Could you tell us how Mr. Gustafson financed his college work?

A. Well, he worked some, and I worked some. I worked in the office of the Western Construction Company. And then my dad helped.

Q. How long did you work for the Western Construction Company?

A. Well, I worked there, I think, about a year and a half before I was married, and almost two years after—I mean two years before I was married and about two years after.

Q. Now, Mrs. Gustafson, directing your atten-

(Testimony of Mrs. Rachel Doris Gustafson.)

tion to the year 1942, and the limited partnership of the Western Construction Company, you are familiar with that, aren't you?

A. Yes, I am.

Q. Did you make an investment in the [347] Western Construction Company as a limited partner? A. Not in 1942.

Q. Oh, yes. Now, tell the Court, in 1942 did you have any discussions with anyone regarding the limited partnership of the Western Construction Company?

A. Well, we had—it was a family affair, but I was married, and we had three children, and when you have a family you think before you take a risk, and I didn't feel that we should go into anything like that then. My husband had gone into other business in the meantime and—well, we just didn't feel that we should.

Q. Now, you say "take a risk." Tell the Court what you mean by that. What kind of a risk did you mean?

A. Well, I was to give a note for $5,000. That would put my son through college, or we could do a lot of other things with $5,000, and I knew that when you signed a note you had to pay it. That when you sign a note that is your obligation.

Q. You didn't then go into the partnership in 1942? A. No, I did not.

Q. What about 1943? Did you go into the partnership at that time?

A. In 1943 my sister Betty became of age, and

(Testimony of Mrs. Rachel Doris Gustafson.)

the discussion was reopened, and we both went in together then at the same time. [348]

Q. How did you go in—on what basis?

A. Well, Bernice and Lloyd both had borrowed $10,000 from dad, and those notes were recalled and that amount of $20,000 was just—I assumed half of one of these $10,000 notes and made a note for $5,000.

Q. To whom was the note made?

A. To my dad.

Q. What did you get for the note?

A. I didn't get anything for the note. I gave the note that I owed.

Q. You got or you gave?

A. I gave the note to my dad.

Q. Didn't you get $5,000 that you invested in the limited partnership?

A. Well, that money—that was just——

Q. (Interposing): I am sorry. This is 1943.

A. You see, Bernice and Lloyd had each taken $10,000, and we divided that. Betty came in at the same time.

Q. Now, at that time, Mrs. Gustafson, can you tell the Court—oh, by the way, had you discussed this investment with your husband?

A. Naturally.

Q. Was he willing that you make the investment? A. Yes.

Q. After you made it how did you treat it with respect [349] to the material community consisting of yourself and Mr. Gustafson?

(Testimony of Mrs. Rachel Doris Gustafson.)

A. Well, we treated it as community property. It was his obligation as much as mine.

Q. However, I believe only you signed the note, is that correct? A. That is right.

Q. Now, what about your financial worth at that time, both from the community standpoint and your sole and separate estate. I am referring to the date when you signed the note.

A. Well, my husband had a business that was not shaking the world, but it was giving us a good living, and we could have taken care of the note very easily.

Q. Did you have some property of your own—that is, your own sole and separate estate at that time? A. Yes, I did.

Q. And what was the value of that?

A. Well, I cannot really say what the value of it might have been, but it was enough to take care of the note.

Q. And you owned your own home?

A. Yes.

Q. Where was your home situated at that time?

A. We lived at 3219 Magnolia Boulevard.

Q. And you sold that home recently, didn't you?

A. Yes, we did. [350]

Q. What did you sell it for?

A. Oh, I think it was for $23,500.

Q. And was that home clear at the time that you signed this note?

A. No, it was not. We had a small mortgage on it. I think—oh, I would not know the exact amount,

(Testimony of Mrs. Rachel Doris Gustafson.)

but it was around about $4,000 I would think, and we had low interest on the money, and the mortgage was written so that we could not pay more than so much in a year, and we didn't refinance it because we thought that it was just as well to have that money there.

Q. And your husband was in what business at that time? A. He has a meat market.

Q. Did he own it? A. Yes.

Q. Did he owe anything on it? A. No.

Q. Where is that market located?

A. It is located at 2002 Market Street in Ballard.

Q. Can you give us any idea of the value of that business at the time you signed this note?

A. You had better ask him. I would not know.

Q. Very well. We will ask him. Did you have any stocks or bonds.

A. Yes, I have stock in the company. It is a [351] corporation.

Q. The meat market is a corporation?

A. Yes.

Q. How much stock do you have in that company?

A. I think it is written up. He has 29 shares and I have 1.

Q. Did you have any bonds at that time?

A. Any government bonds?

Q. Yes.

A. I would not know, whether I did right then or not.

(Testimony of Mrs. Rachel Doris Gustafson.)

Q. Did you have any cash in the bank at that time, if you remember?

A. Oh, I am sure that we did.

Q. Can you give us any approximate amount?

A. My husband pays the bills. I would not know. You will have to ask him.

Q. You remember that you did have a bank account at that time? A. Oh yes.

Q. With money in it?

A. Yes. I wrote checks.

Mr. Potts: I will have this marked for identification.

The Court: That will be marked Petitioners' Exhibit 20 for identification. [352]

(Document above referred to marked Petitioners' Exhibit 20 for identification.)

Mr. Potts: I think, Mr. Payne, you have a copy of this.

Mr. Payne: Yes.

Q. (By Mr. Potts): Showing you Petitioners' Exhibit 20 marked for identification, Mrs. Gustafson, can you tell the Court what that is?

A. Well, this is a statement of my account at the Western Construction Company of the investment and the share in the profits and withdrawals.

Q. And that covers the years, does it, from 1943 to——

A. (Interposing): To 1946.

Q. To 1947, does it not? A. That is right.

Mr. Potts: We offer, if the Court please, Petitioners' Exhibit 20 in evidence.

(Testimony of Mrs. Rachel Doris Gustafson.)

Mr. Payne: No objection.

The Court: It will be received in evidence as Petitioners' Exhibit No. 20.

(Document heretofore marked Petitioners' Exhibit 20 for identification received in evidence.)

PETITIONER'S EXHIBIT No. 20

Rachel Gustafson

June 30, 1943, to Dec. 31, 1945.

Investment		$ 5,000.00
12/31/43	6 mos. profit	5,788.62
12/31/44	Share net profit	2,075.24
12/31/45	Share net profit	5,693.74
		$18,557.60

Withdrawals

9/15/43	$ 575.00
12/11	575.00
4/10/44	350.00
5/15/44	235.00
6/14/44	350.00
9/13/44	350.00
1/11/45	350.00
9/17/45	300.00
	$ 3,085.00

Brought forward		$18,557.60
12/31/46	Share of net profit	21.16
		$18,578.76

Withdrawals brought forward	$ 3,085.00
1/14/46	473.55
3/28/46	423.46
5/27/46	218.53
2/13/47	200.00
	$ 4,400.54

Admitted May 25, 1948.

(Testimony of Mrs. Rachel Doris Gustafson.)

Q. (By Mr. Potts): Mrs. Gustafson, you had an interest, did you not, [353] in your mother's estate? A. Yes, I did.

Q. Do you know what that estate consisted of?

A. Well, it consisted of a share in certain properties, and then an interest of a certain amount of Western Construction Company.

Q. And that was not distributed to you at the time that you signed this note?

A. No, it was not.

Mr. Potts: Your witness.

Cross-Examination

By Mr. Payne:

Q. Mrs. Gustafson, I didn't get clear the years that you worked for the Western Construction Company. What years were those?

A. Well, it was—I was married in 1928, and I think I worked there about two years before I was married, and two years afterwards.

Q. And by 1943, when you became a member of the limited partnership, you had a family, did you not? A. Yes, I did.

Q. You were not a member of the first partnership in 1942, were you? A. No, I was not.

Q. Why did you say that you were reluctant to go in at [354] that time?

A. Well, we had signed notes, and I have been the daughter of a contractor all my life, and we have lived with ups and downs, and I just didn't

(Testimony of Mrs. Rachel Doris Gustafson.)

know whether I was willing to risk $5,000, if they should lose it for me.

Q. Did you have some discussion about the 1942 partnership before the others signed up?

A. Yes, we did.

Q. Did they ask you to come in?

A. Yes, they did.

Q. And did you talk to your husband about it?

A. Yes, I did.

Q. And did he agree that you should do it?

A. Well, we both agreed that we should not do it.

Q. What changed your mind in 1943?

A. Well, the discussion was reopened, because Betty became of age. She was 21 then. She had not been old enough before to be in the partnership, and we were a little better off then than we had been in 1942.

Q. Did you have a discussion with your father about the thing? A. Yes, I did.

Q. Did he tell you that he expected to make good money in the partnership?

A. He didn't say how much he expected to make. [355] In fact, I do not think that any of his children have ever known how much our fathers made. I don't tell my children how much we make either.

Q. But did your father tell you that he expected to make some money in business so that that note would be paid off out of the business.

A. I think everybody hopes to make money

(Testimony of Mrs. Rachel Doris Gustafson.)

when he goes into business, don't they? Otherwise they would not go into business.

Q. Did your father ever talk to you about the possible effect of reducing his income tax in that way? A. Not one word.

Q. What did your husband say when you were talking to him about signing a note in 1943?

A. He said that it was perfectly all right with him.

Q. Well, did you have any discussion between yourselves as to how you would treat that in your respective income tax returns—the income from the partnership?

A. No, I don't think that we talked about that.

Q. When it came time to prepare your income tax returns for 1944, covering the year 1943, what did you do? Did you prepare that?

A. No, I have never prepared an income tax return. Either our own bookkeeper has taken care of our own, and then they will prepare it at Western Construction Company for their [356] part.

Q. What do you mean by "For their part"? I don't understand that.

A. Well, I think our bookkeeper got all our records straight as to what our business had brought in.

Q. You mean you and your husband's business?

A. Yes, that is it.

Q. And then what do you mean about the Western Construction Company?

(Testimony of Mrs. Rachel Doris Gustafson.)

A. Well, they finished the report—completed it for us.

Q. For the amounts of the profits attributable to you from the partnership? A. Yes, sir.

Q. Did they ask you whether that was to go in your return or whether it was to go into your return and your husband's?

A. Well, I think we have always filed separate returns, my husband and I.

Q. Did you have any discussion with anybody from Western Construction Company, or any place else about what that was—whether that was yours or his? A. No.

Q. Your answer is, "No"?

A. My answer is, "No," that is right. [357]

Q. Did you have any separate property at the time that you married your husband in 1928—anything that belonged to you solely?

A. Well, I had that part of my mother's estate. There was property in that individual estate that belonged to me solely.

Q. Do you know how much that was?

A. I would not know.

Q. How did you learn about that? Did your father tell you? A. Yes, he did.

Q. You knew the difficulties that the partnership went through in 1935 and 1936, did you?

A. Yes, I did.

Q. You were old enough to remember that?

A. Yes, sir.

Q. That was after your marriage?

(Testimony of Mrs. Rachel Doris Gustafson.)

A. Yes, sir.

Q. And you had a family of your own?

A. Yes, sir.

Q. And you were conversant with conditions then, were you? A. Yes, sir.

Q. Your father never told you what that was, if any. A. What? [358]

Q. He never told you of the interest coming to you from your mother's estate, did he?

A. No, and I never asked him either.

Q. Did you have anything else at the time of your marriage? A. No, I did not.

Q. Did you acquire anything else by gift from your father, or from anybody else between then and 1943?

A. Well, I acquired some money through the sale of a piece of property. One of these properties that was listed at the time of my mother's death was sold, and I was given my share in that property.

Q. Do you remember how much that was?

A. I cannot say the amount, because it was not given to me—I didn't take it in money. I took it in a contract on a small house, and some bonds, and right now I cannot tell you what it was. I think it amounted to about $5,000.

Q. And that was in what year.

A. I would not venture to say what year. I cannot remember what year it was.

Q. Could you say whether it was before 1943 or after? A. It was before 1943.

(Testimony of Mrs. Rachel Doris Gustafson.)

Q. Where was the house—here in Seattle?

A. It was an apartment building here in Seattle.

Q. Your husband has been in the meat market business [359] for a long time, has he?

A. Ever since he came out of school, in 1931.

Q. Since you were married he went into that business?

A. He got out of school at the very bottom of the depression, and I do not think that there was one engineer that graduated in civil engineering that year that got a job in civil engineering. They all went into other things, and he had learned the meat business while he was going to school, and he got a job right away at that, and then bought the market within a few months—a half interest in it—and then within a short time he bought the other half interest.

Q. Do you know Mr. Von Harten?

A. No, I do not.

Q. You do not know Mr. Von Harten?

A. No.

Q. Coming back to your returns which were filed for 1943, and later, can you say now where your return was prepared, and who prepared it in final form? Was it prepared down at the offices of the Western Construction Company?

A. I suppose it must have been, in 1943.

Q. Do you remember going down there to sign the return for 1943?

A. Well, I have not always gone down there to

(Testimony of Mrs. Rachel Doris Gustafson.)

sign it. Sometimes it has been mailed out to us to sign, if it has been prepared in the office. [360]

Q. Have your returns customarily since 1943 been prepared by the Western Construction Company? A. That is right.

Q. And you say sometimes they would send the returns out to you for signature?

A. That is right.

Q. How would they get the information from you about your own business? Would you furnish that to them?

A. Well, our own bookkeeper gets that information ready, and we turn that part over to them.

Q. And then the Western Construction Company makes out the balance of the return?

A. That is right.

Q. Now, you testified concerning your capital amount in the Western Construction Company—Exhibit No. 20. A. Yes.

Q. You notice some withdrawals in there, Mrs. Gustafson, don't you, as of 9-15-43, $575? Do you know what that was?

A. I imagine it was income tax.

Q. You think all of those amounts appearing on that schedule under withdrawals were income tax?

A. I think they were all income tax. I have had no occasion to draw money. There has been no reason why I should not, but I just never have drawn any.

Q. And these checks which are made to you—take the [361] first one, September 15, 1943, at-

(Testimony of Mrs. Rachel Doris Gustafson.)

tached to your exhibit No. 20 for $575, do you know what you did with that check?

A. Well, that is made out to my husband and not to me. And I imagine that was for payment of our income tax—the portion that was the Western Construction Company's earnings.

Q. I call your attention to the next check, also made out to him on December 11, 1943, in the same amount, and I will ask you if that is also income tax. A. Yes, sir.

Q. You think all of these checks then do represent amounts that you received for payment of income tax? A. That is right.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.)

Mr. Potts: I will call Mr. Gustafson.

Whereupon,

CARL LEONARD GUSTAFSON

called as a witness on behalf of the Petitioners, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. What is your name?

A. Carl Leonard Gustafson.

Q. And where do you reside? [362]

A. Box 444, Issaquah, Washington.

(Testmony of Carl Leonard Gustafson.)

Q. How long have you been a resident of the State of Washington?

A. Since 1907 I believe it is.

Q. And of King County?

A. The same length of time.

Q. Mr. Gustafson, what has been your education?

A. Well, I started out with pre-medics. I believe it was in about 1925, and went nearly two years in pre-medics. And then I believe it was in the Fall of 1927 that I began my engineering education.

Q. How did you happen to change from pre-medics to civil engineering?

A. Well, I had married a contractor's daughter, and that contractor, my father-in-law, was explaining to me the possibilities in the line of business that he was in, and looking forward to seven or eight years in medical school was kind of long, so at his request, and seeing the possibilities in that line, I decided to go into engineering.

Q. How did you finance your course in the University?

A. Well, I worked afternoons and Saturdays, and my wife was working, but that was not quite enough to make ends meet. My father-in-law helped me with the balance.

Q. And where was your wife working?

A. In the office of the Western Construction Company. [363]

(Testmony of Carl Leonard Gustafson.)

Q. Now, after you graduated—about what year, by the way, was it that you graduated?

A. I graduated in June of 1931.

Q. What about your engineering, when you graduated? Were you able to put it into any practical use?

A. Well, I had spent my summers when I was going to the University on various jobs for the Western Construction Company that they had.

Q. You had worked then for the Western Construction Company?

A. That is right. I think I worked three summers for the Western Construction Company to pick up what practical knowledge I got, along with my own school work. And when I was through school in 1931, we were then building the Albro Crossing at Georgetown, and Mr. Peterson was the foreman on that job, and I was timekeeper and assistant to him. And when that job was finished, in September I believe it was, the Western Construction Company didn't have any work in sight, and a friend of mine who had opened a new meat market asked me to go to work for him, and with my responsibilities I took that for the time being, and that changed things as far as my engineering future was concerned—construction future.

Q. And you remained, did you, with the meat market for some time? [364]

A. In the Spring of 1932 the man that I was working for was in financial difficulties and needed money, and so he asked me to buy a half interest,

(Testmony of Carl Leonard Gustafson.)

which I did. And I think it was about a year later after that that he wanted to sell out his half, so then I became sole owner together with my wife of the entire stock of the meat market.

Q. Is that a business that is incorporated—is that the business that is incorporated that your wife has testified to?

A. That is right. That is called the Fair Price, Incorporated.

Q. Where is the location of that market?

A. 2002 Market Street, Seattle.

Q. With reference to 1943, can you give us any ideas of the volume of business you did in that year?

A. Well, I would say roughly between $90,000 and $100,000 gross business.

Q. What would you say as to the size of your market compared to the average meat market?

A. Well, I would say that it was just about averaged. During good years I have had two men in my employ all the time, if not part of the time. Right now I just have one full-time man.

Q. Now, with reference to the limited partnership, directing your attention to the year 1942, you have heard your [365] wife testify, have you?

A. Yes.

Q. Can you tell the Court anything concerning the matter—particularly concerning the failure of entering into the agreement at that time?

A. Well, I was perhaps a little reluctant because I had had experience with a partnership. I

(Testmony of Carl Leonard Gustafson.)

had had a partner myself, and I knew the obligations that went with a partnership, and perhaps that was one reason why she was reluctant too.

Q. At any rate, you didn't go in at that time?

A. That is right.

Q. Is that correct? A. Yes.

Q. Now, with reference to the year 1943 did you or Mrs. Gustafson enter the partnership at that time? A. Yes, she did.

Q. Did she discuss the matter with you before entering the partnership? A. Yes, she did.

Q. Did her entrance into the partnership have your approval? A. Yes, it did.

Q. Now, what about this note? Did you know that she was going to sign a note? [366]

A. Yes, I did.

Q. In order to enter the partnership.

A. Yes, sir.

Q. Were you agreeable to her signing a note?

A. I was.

Q. How did you treat that obligation—as her individual obligation or as one of your marital community? A. One of our marital community.

Q. Showing you Exhibit 20 of the Petitioners, I will ask you whether or not many of the checks had been made out to you.

A. Yes. There are quite a few here made out to me.

Q. Now, Mr. Gustafson, at the time that your wife signed that note in 1943, can you tell the Court

(Testmony of Carl Leonard Gustafson.)

or can you give the Court an idea of your community worth—financial worth with respect to the note of $5,000?

A. You mean what the business was worth, and everything?

Q. Your home and other assets, taking into consideration the net assets over the liabilities?

A. Oh, I suppose I would say about $25,000.

Q. Now, with respect to your engineering education and the formation of this partnership in 1943, will you tell the Court whether or not there was any discussion regarding you re-entering the construction business? [367]

A. Well, there was some small discussion between me and my father-in-law along that line, but that never materialized into anything.

Mr. Potts: Your witness.

Cross-Examination

By Mr. Payne:

Q. Mr. Gustafson, you said that you treated the note which your wife signed as a marital community obligation. Is that right? A. Yes, sir.

Q. Will you explain that?

A. Well, by that I would mean that if that note had to be paid, and she could not pay it, I would be ready to back her up on it.

Q. Well, you haven't treated it at all, did you?

A. I don't understand you.

Q. You said that you treated it as a marital obligation. You haven't treated it yet, however, as

(Testmony of Carl Leonard Gustafson.)

far as the note is concerned, have you? You never have had to pay it, have you?

A. No, but if payment was demanded, I would pay it.

Q. Has it ever been paid?

A. No, it has not.

Q. You know your wife had a rather substantial stated partnership profit on that, didn't you—in 1943, and later? [368] A. That is right.

Q. Why didn't you pay the note out of that? Do you know?

A. I suppose because we were never asked to.

Q. Now, Mr. Gustafson, you have been in business quite a long time, haven't you?

A. That is right.

Q. You know about the obligations of filing income tax returns, don't you? A. Yes.

Q. Who prepared your returns for 1943—your return for 1943?

A. You mean for my business—for my personal business?

Q. Yes, your income tax return.

A. My personal tax return?

Q. Yes.

A. The accountant for the Western Construction Company.

Q. Why was that?

A. Well, probably that was a more convenient way of doing it.

Q. Who was that accountant, do you know?

(Testmony of Carl Leonard Gustafson.)

A. I cannot remember who it was in 1943 exactly by name, no. [369]

Q. Do you remember who did it later?

A. I know Von Harten did it this year, and last year, I believe.

Q. Did you ever talk to him about your income, whether it belonged to you, or whether it belonged to your wife—I mean the income from Western Construction Company.

A. Did you say did I talk to him about it?

Q. Yes. A. No, I did not.

Q. Did you talk to anyone in the Western Construction office about it?

A. Will you repeat the question?

Q. I say, did you talk to anyone in the Western Construction office about it, Mrs. Potts, or Mr. Potts, or any of the Johnson brothers?

A. No, I cannot remember that I ever did.

Q. How did you decide—we will put it this way, you did take into your income return part of the income from the Western Construction Company, didn't you? A. That is right.

Q. Why did you do that?

A. Well, that is what it was supposed to be.

Q. What do you mean by that, "That is what it was supposed to be"? Whose supposition was it that it belonged there—you, or your wife or someone else? [370] A. We both did.

Q. You both did? A. Yes, sir.

Q. Did you talk it over between you and decide to do that?

(Testmony of Carl Leonard Gustafson.)

A. We knew that that was the right thing to do.

Q. And you had done the same thing in 1944 and 1945, and later? A. That is right.

Q. Then would you go down to the Western Construction office and sign the return down there, or was it sent out to you, or how was it handled?

A. Sometimes it was signed down there, and sometimes it was mailed out to us.

Q. And you furnished to them the information regarding your own business, and they finished the return?

A. My bookkeeper from my own business furnished that information.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.)

Mr. Potts: I will call Betty Ellingson.

Whereupon,

BETTY LORRAINE ELLINGSON

called as a witness on behalf of the Petitioners, having been [371] first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. Will you state your full name?

A. Betty Lorraine Ellingson.

Q. Where do you live, Mrs. Ellingson?

A. 914 15th Avenue, Seattle.

(Testimony of Betty Lorraine Ellingson.)

Q. How long have you lived in Seattle, Washington? A. Nearly 26 years.

Q. How long? A. Nearly 26 years.

Q. And you are the daughter of George Johnson? A. That is right.

Q. When were you and Mr. Ellingson married?

A. April 24, 1943.

Q. That was before you became a partner in the limited partnership of Western Construction Company? A. That is correct.

Q. And what was Mr. Ellingson's occupation at that time?

A. He was in the Marine Corps.

Q. In active service? A. Yes.

Q. Mrs. Ellingson, do you recall the formation of the limited partnership in 1943—in 1943 I am referring to. [372]

A. Yes, I do.

Q. Will you tell the Court—by the way, did you become a partner in this partnership in that year?

A. Yes, I did.

Q. Will you tell the Court the reason you became a partner?

A. Well, of course I had heard from my sister and brother that they were in it in 1942, and I was a wee bit envious when they went into it. I understood that they had taken a risk too, but they had done well in 1942, and I was just a little bit jealous. So in 1943 we talked it over, and Lloyd and Bernice were willing to, if it was all right with myself and my husband, to divide their share so that both

(Testimony of Betty Lorraine Ellingson.)

Rachel and I could then enter into it. And we discussed it between ourselves, and realizing the risk we were taking, and maybe it would not all be a bed of roses, why we were going to try it.

Q. What is your husband's occupation?

A. He is a carpenter.

Q. Did that fact have anything to do with your entrance into the organization?

A. Well, yes, it did. My husband worked for a contractor before he went in the Service, and his specification number in the Service was 050, which is a carpenter in the Marne Corps, and they recommended that when he got of out [373] the Service the best thing for him to do would be to go into the construction line of business. And knowing of this, he was quite interested in getting into something of that sort.

Q. Did you discuss this opportunity or investment with him?

A. Yes, we talked it over—we talked it over quite a bit before he finally did something about it.

Q. Now, Mrs. Ellingson, what was your financial condition—yours and your husband's financial condition at the time that you entered in to this partnership?

A. Well, we were not what you would say wealthy, but we had plenty to take care of the note. He had some money that he had coming to him from his father's estate. He hadn't collected it yet, because he had been in the Service when it was due him, but at any time he could have gone back and

(Testimony of Betty Lorraine Ellingson.)

gotten that money, and that money amounted to better than $2,500. And then besides that, of course I was working at the time that we were married, and I drew an allotment of $50 a month, plus his wages, and I knew before the year was up I was going to have another $30 to add to that.

Q. You mean $30 a month?

A. $30 a month allotment to add to that. And I knew that it could be paid up within two years.

Q. However, on that other $30 a month allotment you might have a little expense too, don't you think? [374]

A. Well, there would be a little expense, but then I mean it would take—if I had to gather everything together, I had quite a few sources to gather it from.

Q. Mrs. Ellingson, have you got anything to show us—anything about this inheritance of your husband at that time?

A. Yes. When my husband came back from spending 14 months overseas, we went back East and he got the money that he had coming to him, and we deposited a large amount of it in the bank. He came back from overseas in July, and, as the account will show on this, on July 24, 1944—he got back in the States on July 2, 1944,—we deposited the $1800, and then a month later—not quite a month later—we deposited another $150.

Q. You are reading from a pass book, it that it?

A. Yes. From a pass book of the National Bank of Commerce of Seattle.

(Testimony of Betty Lorraine Ellingson.)

Q. From the National Bank of Commerce of Seattle? A. Yes, sir.

Q. Did you discuss with your husband this obligation on the note, and with regard to his helping you in the event that it became necessary to pay it?

A. I discussed it with him, and of course he realized, too, that even though we had this, that it would still take about the last bottom cent that we had in the bank to pay it off. So he went to talk at the time to a Marine Corps [375] lawyer by the name of Hatten who had been in the Marine Corps with him, and he consulted him with regard to it. I don't know where Hatten is now, but he was supposed to be a very good lawyer, and he told him at the time that he was definitely obligated for that—that if I didn't pay it he would have to pay it.

Q. With that knowledge did you have your husband's consent to sign this note?

A. Yes, I did.

Q. And you did sign the note?

A. Yes, I did.

Q. Now, when your husband got out of the Marine Corps, Mrs. Ellingson, what did he do?

A. He went to work for the Western Construction Company.

Q. And how long did he work for them?

A. Well, he worked for them until the last part of 1946, I believe it was, when the work slowed down, and then he was lent to Kuney-Johnson until the Western Construction Company maybe got a little more work.

(Testimony of Betty Lorraine Ellingson.)

Q. Is he still working for Kuney-Johnson Company?

A. He is still working for that company, yes, sir.

Mr. Potts: Your witness.

Cross-Examination

By Mr. Payne:

Q. How did you acquire your interest in the partnership, Mrs. Ellingson? Did your father give you some money, or how did you work it out?

A. No, there was no money transaction whatsoever. When my brother and my sister Bernice had the two notes for $10,000—that was $20,000 between them—and when they returned those notes I made a note out and gave it to Dad for $5,000, and the interest was all in the company, and it was changed over to my name instead of Lloyd's or Bernice's.

Q. That was in connection with the 1943 partnership? A. That was in 1943, yes.

Q. You said that you were a little bit jealous of the other children. What did you mean by that?

A. Well, when you see somebody else does well one year, why it makes a person a little bit envious Of course, I realize that it might not be so well the next year.

Q. Did you hear about the results in 1942?

A. Well, I was around enough to find out a little bit that they did—that they made a little bit of money after they got through.

Q. You knew that Bernice and Lloyd each had

(Testimony of Betty Lorraine Ellingson.)

a stated $10,000 investment in the 1942 partnership, didn't you?

A. I knew that they had that but, of course, I didn't know just exactly how much they had made in 1942, although I knew that they had made what I thought was probably enough to [377] be something that I would be a little jealous of.

Q. Did you tell your dad about that?

A. Well, we discussed it with Dad.

Q. Well, I asked him at the time just what it was—why I had not been considered when they opened up. And he said, "Well, you wait until you get to be of age," and he said, "You know, there are a lot of risks in it, and while you can make money, you also cannot make money." That is about what I remember about that conversation. You know, that is not the exact conversation, but that is what it amounted to.

Q. Did you tell him that the other two children in your family, Bernice and Lloyd, had made a substantial amount in 1942?

A. No, I didn't tell him that because I—although I knew that they had done pretty well, I didn't know just what the exact amount was. I still don't know what the exact amount is that they made on their interest.

Q. You have heard the testimony here of the last couple of days, haven't you, on those points?

A. That is right, but the actual figures I cannot tell you right now.

(Testimony of Betty Lorraine Ellingson.)

Q. Are there any other children in your family besides the four of you? [378]

A. I have a younger brother.

Q. How old is he? A. 19.

Q. 19 now? A. Yes, sir.

Q. What did your dad say when you told him that you were a little bit jealous about the other two children?

A. I don't remember. I don't remember much else what he did say, except that if it was all right with Bernice and Lloyd, it was all right with him. He has never been partial to any one of us. He has always treated all of us the same way.

Q. What about Rachel? Did you and Rachel talk it over too?

A. Yes. Well, Rachel and I—Rachel had been consulted in 1942, and of course at that time I was not consulted at all. But Rachel and I naturally, when we got together and got to talking between us children, why we talked it over a little bit. But that was about all. Most of the discussion that went on was between my husband and I because, after all, it was our debt that we had to pay back to dad, and it was not Rachel's debt, or Lloyd's debt, or Bernice's debt, but it was my husband's and mine that had to be paid—it was my husband and I that had to pay that $5,000 back.

Q. Did your father suggest that you talk to Bernice and Lloyd? [379]

A. Well, a lot of that came from my own mind. I have always been a little independent that way. I

(Testimony of Betty Lorraine Ellingson.)

would like to get out and make a little bit for myself if I see the chance.

Q. Well, you did talk to Bernice and Lloyd then, did you?

A. Oh yes, I discussed it a little bit with them—yes.

Q. With what result?

A. They were willing to, if I wanted it, to turn their notes back—get their notes back from Dad—the $10,000 note—and then give him another $5,000 note, and in return I would give Dad a $5,000 note for myself, and the same in the case of Rachel.

Q. When did your husband get back from the Marine Corps, Mrs. Ellingson?

A. In October of 1945.

Q. When did he go in?

A. The last part of 1941.

Q. So he was in the Marine Corps——

A. (Interposing): Four years.

Q. I beg your pardon? A. Four years.

Q. He was in the Marine Corps then from what date in 1941?

A. Well, he enlisted in Minneapolis, and he went from [380] Minneapolis to San Diego.

Q. I mean just generally. When did he go into the Marine Corps?

A. It was in December of 1941.

Q. And he didn't get back until October of 1945?

A. That is right, but he was stationed here at Seattle—at Whidby Island, and Sand Point, and

(Testimony of Betty Lorraine Ellingson.)

he was here most of the time except when he was overseas.

Q. Mrs. Ellingson, your husband was in the Service when your 1943 return was prepared then, wasn't he?

A. My husband was—no—well, the 1943 return was prepared in 1944, of course. Yes, he was.

Q. When the time came for making up the return, were you told what you should do about that?

A. Well, yes, I knew that I had—I filed a return before, and I knew that one had to be filed, and I knew that I would have to put down whatever I earned, but when it came to putting down what I had gotten out of my investment in the company, I could not very well have done that, because it would take me a long time to figure that out, so the office figured that part of it out for me, and I supplied the rest of the information, and that was added.

Q. Who made out your return?

A. It was made out down at the offices of the Western Construction Company. [381]

Q. Did you go down there to sign it?

A. Yes, I did. I think I went down there and I sat down—if I remember right at that particular time I sat down there and stayed there until the return was finished, and filled in any information that I may have forgotten.

Q. And part of that income was placed in your husband's return for 1943?

A. I believe so.

Q. What discussion did you have about that?

(Testimony of Betty Lorraine Ellingson.)

A. My husband and I?

Q. Yes.

A. Well, we had discussed that, of course, before he left, when we were talking about this investment—this investment we were talking about—how it should be divided, and naturall we thought that it should be divided split, the same thing as now, that if he makes money, I fiure half of it is mine; in fact, most of the time I figure it is all mine.

Q. Did you have any discussion about that point in the Western Construction Company offices?

A. No.

Q. Whether you should divide it with your husband or whether you should include it in your return?

A. No. I had no discussion down at the Western Construction Company in regard to that. [382]

Q. You just made it out and split it 50-50 with your husband? A. I think that we did.

Q. In 1943? A. yes.

Q. And the same in 1944 and 1945?

A. As I recall, yes.

Q. Now, Mrs. Ellingson, you knew that it would be to your tax advantage to divide your income on a return with your husband, didn't you?

A. Well, yes, maybe I did. I mean, most people go to a store where they can buy eggs cheapest, and they go to any place where they can get it cheapest, and I didn't think that there was anything against the law regarding doing that.

Q. So you decided that it would be a good idea

(Testimony of Betty Lorraine Ellingson.)

to divide the income with your husband from this partnership?

A. Well, on most everything that we do, I think that it is half and half. I figure that if what I make, half of it is his, then he should pay half of the income tax on it, and anything that he makes, if half of that is mine, I think that I should pay half of the income tax on that.

Mr. Payne: That is all.

Mr. Potts: I will have this marked as Petitioners' Exhibit 21 for identification. [383]

(Document above referred to marked Petitioners' Exhibit 21 for identification.)

Re-Direct Examination

By Mr. Potts:

I will show you Petitioners' Exhibit 21 for identification, and I will ask you to tell the Court what that is.

A. This is a financial statement, I guess.

Q. May I ask you if that is a statement of your investment?

A. That is a statement of my investment and withdrawals.

Q. And the checks supporting the withdrawals?

A. That is right.

Mr. Potts: We offer Petitioners' Exhibit 21 for identification in evidence.

Mr. Payne: No objection.

The Court: It will be received in evidence as Petitioners' Exhibit 21.

(Testimony of Betty Lorraine Ellingson.)

(Document heretofore marked Petitioners' Exhibit 21 for identification, received in evidence.)

PETITIONER'S EXHIBIT No. 21

Betty Lorraine Ellingson

June 30, 1943, to Dec. 31, 1945.

Investment		$ 5,000.00
12/31/43	6 mos. net profit	5,788.62
12/31/44	Share net profit	2,075.25
12/31/45	Share net profit	5,693.74
		$18,557.61
	Withdrawals	
9/14/43	Collector of Internal Revenue	222.54
12/ 9/43	Collector of Internal Revenue	222.64
4/13/44	Collector of Internal Revenue	350.00
5/15/44	Collector of Internal Revenue	409.64
5/15/44	Collector of Internal Revenue	354.25
5/15/44	Collector of Internal Revenue	3.54
6/13/44	Collector of Internal Revenue	350.00
9/13/44	Collector of Internal Revenue	350.00
12/11/46	Personal withdrawal	200.00
		$ 2,462.61
Brought forward		$18,557.61
12/31/46	Share of net profit	21.16
		$18,578.77
Withdrawals brought forward		$ 2,462.61
1/14/46	Collector of Internal Revenue	314.66
3/14/46	Collector of Internal Revenue	210.69
3/14/46	Personal withdrawal	63.35
		$ 3,051.31

Admitted May 25, 1948.

(Testimony of Betty Lorraine Ellingson.)

Mr. Potts: I think you have a copy, Mr. Payne, have you not?

Mr. Payne: Yes.

Mr. Potts: That is all. [384]

Re-Cross Examination

By Mr. Payne:

Q. Do you know what those withdrawals were used for, Mrs. Ellingson?

A. Well, yes. Most of them were used for income tax. As long as the income tax was paid down there, this came out of my personal account, and I could not see what difference it made, and our account is savings and not checking, and this is a good way of keeping receipts. Some of them—there are a couple of personal withdrawals here that I took for our own personal use.

Q. How much is the profit shown on that return as having been received with respect to your share from the Western Construction Company for 1945?

A. For 1945?

Q. Yes. A. $5,693.74.

Q. I show you a document which purports to be your individual income tax return for 1945 and ask you if that is your return for that year.

A. Yes.

Q. Can you turn to the information there showing the amount of income received from the Western Construction Company, and state how much is

(Testimony of Betty Lorraine Ellingson.)

reported in that return from that source for [385] 1945.

A. $5,811.90.

Q. There is a slight difference between the two amounts, but I will ask you if you did not include the entire amount in your return for 1945.

A. Yes, I did.

Q. Why? A. I am sorry.

Q. Can you explain that?

A. No, at the time—of course I was working down in California and my husband was down there too, and I recall now some discussion we had between us, but I don't remember just what it was.

Q. You cannot say then?

A. No. I don't recall for certain just what it was—why it was filed separately that year.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.)

Whereupon,

EVELYN LILLIAN JORGENS

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts: [386]

Q. What is your name, and where do you reside, Mrs. Jorgens?

(Testimony of Evelyn Lillian Jorgens.)

A. My name is Evelyn Lillian Jorgens, and I live at North 603 Walnut Road, Opportunity, Washington.

Q. Near what city is Opportunity, Washington?

A. It is a suburb of Spokane.

Q. Mrs. Jorgens, you are the daughter of J. A. Johnson, aren't you?

A. That is right.

Q. How long have you resided in the State of Washington? A. For 32 years.

Q. When were you and Mr. Jorgens married?

A. In July of 1939.

Q. What is Mr. Jorgens' occupation?

A. He is a pressman for the Cowles Publishing Company in Spokane.

Q. Mrs. Jorgens, before you were married, what kind of work did you do, if any?

A. I worked in the office in the summertime. Of course I was going to school up until a year before I was married, and I did some work at the Frederick and Nelson Tea Room and the Betty Jarvis Tea Room.

Q. Did you ever work for the Western Construction Company?

A. Yes, just about every summer during high school and [387] college.

Q. Just in the summertime is that? You just worked in the summertime for the Western Construction Company?

A. I believe so. And then a year after I was married I came home and worked in the office for

(Testimony of Evelyn Lillian Jorgens.)

close to a month while Mrs. Potts was in the East.

Q. Now, Mrs. Jorgens, with reference to the formation of the limited partnership of the Western Construction Company in 1942, did you become a member of the partnership at that time?

A. Yes, I did.

Q. How did you acquire your interest?

A. My father gave me the money.

Q. Did he give you the money?

A. He gave me the money, which I turned back to the Western Construction Company and gave him a note for that amount.

Q. You borrowed the money on a note, is that right? A. Yes, sir.

Q. I think that that note is in evidence. Now, at that time, Mrs. Jorgens—at the time that you signed this note in 1942, did you discuss this matter with your husband? A. Yes, I did.

Q. And what was your financial worth at that time—you and your husband's worth? [388]

A. Well, my husband had a good job, and we had just finished building our home, which a year later we turned down $12,000 for. And then we had a new car. We had another lot out in the Valley there near our home. And we had some lake property. We had an investment in an airplane in Spokane, and he had an amateur radio station.

Q. Have you any idea what your community's net assets over liabilities amount to at that time?

A. I don't know the exact figures, but I know that it well covered that note.

(Testimony of Evelyn Lillian Jorgens.)

Q. More than $6,666? A. Yes, sir.

Q. When you signed this note did you have your husband's permission to sign the note?

A. Oh, yes.

Q. What about the community assuming that obligation? Was there any understanding regarding that?

A. Yes, we talked it over between us and we realized that it was just as much his responsibility as mine.

Q. And after that did you—how after that did you divide the income?

A. You mean the income——

Q. (Interposing): Or your returns—the profits from the business. How did you report them?

A. As I understand it—as I remember it I think that [389] we divided the profits.

Mr. Potts: I will have this marked for identification.

(Document above referred to marked Petitioners' Exhibit 22 for identification.)

Q. (By Mr. Potts): Do you know, with reference to Mr. Jorgens, whether there was anything in the conversations leading to your going into this partnership relative to his assuming an active interest in the Western Construction Company?

A. Well, he had been approached on the subject by both my Uncle Albin, and by my father. They didn't think that he should stay over there in Spokane. They thought that he could do better coming

(Testimony of Evelyn Lillian Jorgens.)

over here and going into the carpentry trade and working in the company.

Q. Showing you Petitioners' Exhibit 22 marked for identification, can you tell the Court what that is?

A. This is the record of my investment in the company, and my share of the net profits and my withdrawals.

Q. Now, will you look through this and give to the Court the withdrawals that were not used to pay income taxes.

A. Well, in 1943—February of 1943 we withdrew $3,000 for private use. In April of 1943 we withdrew $1,500. In June of 1943 we withdrew $1,000. In August, on August 12, 1943 we withdrew $1,000. And on March 1st of 1945 we withdrew [390] $2,000.

Mr. Potts: We offer, if the Court please, Petitioners' Exhibit 22 in evidence.

Mr. Payne: No objection.

The Court: It will be received as Petitioners' Exhibit No. 22.

(Document previously marked as Petitioners' Exhibit No. 22 for identification, received in evidence.)

(Testimony of Evelyn Lillian Jorgens.)

PETITIONER'S EXHIBIT No. 22

Evelyn Jorgens

Jan. 1, 1946, to Dec. 31, 1947.

Investment amount brought forward		$60,433.99
12/31/1946	Share of net profit	28.22
		$60,462.21
Withdrawals brought forward		$20,339.99
1/14/1946		286.35
3/13/1946	Collector of Internal Revenue	100.00
		$20,726.34

Evelyn Jorgens

Jan. 1, 1942, to Dec. 31, 1945.

Capital investment		$ 6,666.67
12/31/1942	Share of profits	23,743.94
6/30/1943	6 mos. profit	11,946.55
12/31/1943	6 mos. profit	7,718.17
12/31/1944	Share of profits	2,767.00
12/31/1945	Share of profits	7,591.66
		$60,433.99

Withdrawals

2/..../1943	Cash withdrawn for private investment		$ 3,000.00
3/13/1943	Income tax payment	$1,676.23	
	Cash for private use	1,323.77	3,000.00
4/21/1943	Cash for personal use		1,500.00
6/17/1943	Income tax $1,676.23		1,700.00
	Cash for personal use		1,000.00
8/12/1943	Cash for personal use		1,000.00
9/13/1943	Income tax		1,676.23
12/ 9/1943	Income tax, $1,676.23		1,700.00
4/10/1944	Income tax		600.00
5/15/1944	Collector of Internal Revenue		327.97

(Testimony of Evelyn Lillian Jorgens.)

Withdrawals

5/15/1944	Collector of Internal Revenue	3.28
	Collector of Internal Revenue	329.22
	Collector of Internal Revenue	3.29
6/13/1944	Collector of Internal Revenue	600.00
9/13/1944	Collector of Internal Revenue	600.00
12/16/1944	Collector of Internal Revenue	600.00
3/12/1945		700.00
3/ 1/1945	Cash for personal use	2,000.00
		$20,339.99

Admitted May 25, 1948.

Mr. Potts: Your witness. Just a minute. I neglected to ask Mrs. Jorgens a question.

Q. (By Mr. Potts): Do you recall a contract of the Western Construction Company near Spokane, called the Vee Lox job—a job I believe building the Naval Depot over there? A. Yes, I do.

Q. Will you tell the Court whether or not you assisted the Western Construction Company in any way during the building of that project.

A. Well, I could not go out on the job and work in the office, because I had two young children, but I did assist my father at home with quite a bit of stenographic work in the evenings and on Sundays.

Q. Did you get any payment for that work?

A. No, I did not. [391]

Mr. Potts: Your witness.

(Testimony of Evelyn Lillian Jorgens.)

Cross-Examination

By Mr. Payne:

Q. You testified, Mrs. Jorgens, that your father gave you the money to put back into the Western Construction Company. A. Yes.

Q. Did he give it to you with the understanding that you would put it back in? A. Yes.

Q. And you did as he told you?

A. I did as I wanted to do, but that was——

Q. (Interposing): You mean that you wanted to get the money and wanted to put it back in?

A. We had discussed the idea of this, and when he gave me the money, that was all settled.

Q. You testified that you considered the matter of signing the note, and so forth, before you signed it? A. Yes, we did.

Q. Did anyone tell you if you signed the note alone that the community property of yourself and your husband would not be subject to that obligation? A. No.

Q. No one told you that? A. No. [392]

Q. You testified about the withdrawals. Do you know what the major part of those withdrawals were used for, Mrs. Jorgens?

A. Yes. We started a chicken ranch, and we used that money for the building, for the equipment and for the chickens and the feed.

Q. And there are large amounts in there used for income tax too, is that right? A. Yes, sir.

Q. How did you go about withdrawing the money

(Testimony of Evelyn Lillian Jorgens.)

that you needed for the chicken ranch? Did you ask your father about that?

A. We talked over the idea of going into the chicken business and he said that the money was ours; that we could do with it as we pleased.

Q. How did you go about getting it?

A. I just wrote the office and asked them if they would send me a check for the amount that I wanted.

Q. Did you talk to your father about it?

A. Not each time I withdrew money. We talked to him about starting in the chicken business before.

Q. Do you know where your returns and your husband's returns were made up for 1943, 1944 and 1945?

A. I believe they were made up in Seattle.

Q. You mean in the office of the Western Construction [393] Company? A. Yes.

Q. Why was that done?

A. Well, we prepared at home all the facts regarding our chicken business and his income from other sources over there, and we didn't know what the figures were on this. So we just sent that in to Seattle and the returns were made out here.

Q. Then would they send the returns back over to you for signature?

A. Sometimes, and I think there was a time or two when I sent a signed blank over to them.

Q. When you did what?

A. When I signed the blank first and sent it in to them.

(Testimony of Evelyn Lillian Jorgens.)

Q. And it was completed at the Western Construction Company?

A. Just that one part of it. The rest was already on it.

Q. Mrs. Jorgens, I call your attention to Petitioners' Exhibit 22. I notice that this one check, for example, February 9, 1943, was made to Stanley E. Jorgens.

A. Yes. Stanley S. Jorgens is my husband. Is that Mr. or Mrs.? I see that that is Mr.

Q. And I show you the endorsement on that check and [394] ask you if that is your husband's signature. A. Yes, it is.

Q. You didn't sign that, did you?

A. No, I did not.

Q. What did that represent?

A. That was the first $3,000 that we withdrew to put into the chicken business.

Q. Why was the check made out to him instead of to you?

A. Well, this was community property, and it was just as much his as mine.

Q. You mean that you assumed that it was community property?

A. Well, it is in the State of Washington.

Q. Did somebody tell you that?

A. Well, I knew that before.

Q. How did you find that out?

A. Because all the money that he got from his wages were as much mine as it was his.

Q. Did you ever study law?

(Testimony of Evelyn Lillian Jorgens.)

A. No, I did not.

Q. Then how did you find that out? Did somebody tell you that—your brothers or your father?

A. I don't know when I learned that. I have known that as long as I have known a lot of things. I mean, I didn't learn it at that time. I knew that long before I was [395] married.

Q. Now, I will ask you if the interest was in your name—the interest was in your name in the partnership, wasn't it? A. Yes, sir.

Q. Do you know why the check was made to your husband instead of to you?

A. Because he withdrew the money—that particular amount.

Q. I show you another check dated April 21, 1943, for $1,500 to Stanley Jorgens. I will ask you if you can explain the reason why he withdrew that.

A. May I look in here? (Indicating documents.)

Q. Yes. You may look at all of those exhibits.

A. Was that April 21, 1943?

Q. Yes.

A. Well, that was another one that we withdrew for the chicken business, and he wrote and asked for it as far as I can tell from this.

Q. And another one on April 10, 1944, for $600 to Stanley Jorgens.

A. That was for income tax.

Q. Yours or his?

A. I imagine it was his if it has got his name on it.

(Testimony of Evelyn Lillian Jorgens.)

Q. Another one on March 1, 1945, for $2,000, Stanley [396] Jorgens.

A. Well, that was another one that we withdrew for personal use.

Q. You cannot account for the reason that they made those checks out to him instead of you?

A. Well, I don't think it made any difference. This belonged to both of us, and the chicken business belonged to both of us, and that is what we used it for.

Q. Did you ever give your father or the partnership any notes with respect to those withdrawals?

A. To these withdrawals?

Q. Yes.

A. No, because this was my money.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.)

Mr. Potts: I will call Mrs. Bernice Wallin.

Whereupon,

MRS. BERNICE CATHERINE WALLIN

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. Will you state your name? [397]

A. Bernice Catherine Wallin.

(Testimony of Mrs. Bernice Catherine Wallin.)

Q. And where do you live?

A. 7214 Lake Ridge Drive, Seattle.

Q. How long have you resided in Seattle, Washington? A. 30 years.

Q. I take it that that is your age?

A. Yes, sir.

Q. You are George Johnson's daughter, are you?

A. Yes, sir.

Q. When were you and Mr. Wallin married?

A. In November of 1938.

Q. Referring, Mrs. Wallin, to the first limited partnership created in 1942, will you tell the Court how you became a limited partner?

A. Well, my father approached me on the matter, and it sounded like a good idea to me. I talked to my husband about it, and he was also—he also thought it was a good investment, so we borrowed $10,000 from my father and invested it in the Western Construction Company.

Q. What evidence, if any, of that indebtedness did you give to your father?

A. We gave him a note.

Q. Mrs. Wallin, what about yours and Mr. Wallin's financial worth at that time?

A. Well, just offhand—— [398]

Q. (Interposing): At the time that you signed the note?

A. Offhand I would imagine that we were worth—oh, around $11,000 or $12,000.

Q. I think yesterday your father testified that

(Testimony of Mrs. Bernice Catherine Wallin.)

you had built a home. Is that correct—at that time, I mean.

A. Well, we were just going to build a home at that time. It was not yet completed.

Q. What was your husband's occupation at that time?

A. At that time he was the manager of a Safeway Store at Renton, Washington.

Q. Can you give the Court an idea about what his annual earnings were?

A. Well, he made approximately $6,000 and $7,000 a year. He was paid a salary, and then he got a bonus of whatever profit his store showed.

The Court: A bonus of a part of the profit.

The Witness: That is right.

Q. (By Mr. Potts): Now, Mrs. Wallin, directing your attention to the next formation of a limited partnership in the following year, will you tell the Court whether there was any change in your interest in that partnership?

A. Yes, there was. Our notes were given back to us and our loan was decreased from $10,000 to $5,000.

Q. You have heard Mrs. Ellingson's testimony here on [399] the stand relative to—Mrs. Ellingson is your sister, isn't she? A. Yes, she is.

Q. You have heard her testimony relative to her getting her interest in the company? A. Yes.

Q. Was her testimony substantially correct with respect to her getting her interest in the company?

A. Yes, that is the way it worked.

(Testimony of Mrs. Bernice Catherine Wallin.)

Mr. Potts: I will have this marked for identification.

(Document above referred to marked Petitioners' Exhibit 23 for identification.)

Q. (By Mr. Potts): Showing you, Mrs. Wallin, Petitioners' Exhibit 23 marked for identification, can you tell the Court what that instrument is?

A. This shows our original investment in 1942 of $10,000 and my share of the net profit and my withdrawals.

Q. Now, Mrs. Wallin, would you look through the withdrawals and give the amount of any, if any, to the Court, excluding payments of income tax or withdrawals for the purpose of paying income tax.

A. The first one was $800.

Q. Can you give the date approximately on that? [400]

A. March 13, 1943. And the second one was May 25, 1945. And that amount was $180. The third amount was—the third was 9-24-45, and that was for $1,826. Then the next one was March 25, 1946, $158.44. And the next one was April 27, 1946, $5,000.

Q. Do you know what the withdrawal of $5,000 was used for?

A. Well, my husband was going into a real estate business, so we withdrew the $5,000 to pay part of it.

Mr. Potts: We offer Petitioners' Exhibit 23.

Mr. Payne: No objection.

The Court: It will be received in evidence as Petitioners' Exhibit No. 23.

(Testimony of Mrs. Bernice Catherine Wallin.)

(Document above referred to, previously marked Petitioners' Exhibit 23 for identification, received in evidence.)

PETITIONER'S EXHIBIT No. 23

Bernice Wallin

Jan. 1, 1942, to Dec. 31, 1945.

5/12/42	Investment	$10,000.00
12/31/42	Share of net profit	35,615.92
6/30/43	6 mos. profit	17,919.80
6/30/43	Reduction in investment	—5,000.00
12/31/43	6 mos. net profit	5,788.62
12/31/44	Share of net profit	2,075.25
12/31/45	Share of net profit	5,693.74
		$72,093.33

Withdrawals

3/13/43	Withdrawals (Income tax $3,200.00, personal $800.00)	$ 4,000.00
6/14/43		3,200.00
9/13/43		3,200.00
12/15/43		3,200.00
4/10/44		350.00
5/15/44	Collector of Internal Revenue	782.27
5/15/44	Collector of Internal Revenue	7.82
5/15/44	Collector of Internal Revenue	384.09
5/15/44	Collector of Internal Revenue	3.84
6/13/44		600.00
9/13/44		350.00
1/11/45		350.00
3/13/45		1,000.00
5/25/45	Personal withdrawal	180.00
9/24/45	Personal withdrawal	1,826.00
		$19,434.02
Brought forward		$72,093.33
12/31/46	Share net profit	21.16
		$72,114.49

(Testimony of Mrs. Bernice Catherine Wallin.)

Withdrawals brought forward		$19,434.02
6/14/46	Collector of Internal Revenue	444.00
3/25/46	Personal withdrawal	158.44
4/27/46	Personal withdrawal for personal investment in real estate business	5,000.00
		$25,036.46

Admitted May 25, 1948.

Q. (By Mr. Potts): Now, Mrs. Wallin, before you signed the note did you have any discussion with your husband about entering the partnership and signing the note? A. Oh yes, certainly.

Q. And was it agreeable to him?

A. Yes, it was.

Q. How was the business venture with respect to the marital community? Was there any arrangement between yourself [401] and your husband as to whether it would be your separate property, or the property and obligation of the marital community?

A. Well, it was just understood that half of anything that he has is mine, and half of anything that I have is his.

Q. Did you so regard this particular venture?

A. Yes, sir.

Q. Now, in the event that this venture had not been successful as it turned out to be, and the note would have to be paid, and there would be no profits, did your husband understand that situation?

A. Yes, he did.

Q. Was he agreeable to assuming his 50 per cent of that risk? A. Yes, he was.

(Testimony of Mrs. Bernice Catherine Wallin.)

Q. Mrs. Wallin, your mother was Amanda Johnson, was she not? A. Yes, sir.

Q. Did you have an interest in her estate?

A. Yes. She died in 1921.

Q. Was your interest in it ever distributed to you? A. No, it has not been.

Mr. Potts: Your witness.

Cross-Examination

By Mr. Payne: [402]

Q. You testified that your husband understood that if this venture was not successful, that the note would have to be paid, is that right?

A. Yes, sir.

Q. Did he understand whether you would have to pay it or whether he would have to pay it?

A. Well, whatever he has is mine, and whatever I have is his, and anything that he made, part of it would be my money, and anything that I made, part of it would be his money.

Q. How did you decide that?

A. When we got married we always understood that.

Q. By reason of your marriage relationship?

A. Yes, that is right.

Q. Nothing further than that?

A. Well, there is a law in the State of Washington that it is a community property state.

Q. You just mean then that you understood the community laws of the State of Washington were applicable, is that right?

(Testimony of Mrs. Bernice Catherine Wallin.)

A. Yes, that is right.

Q. Do you know of your own knowledge whether a note signed by the wife is an obligation of the community property or an obligation of the husband in Washington?

A. I know that if I sign a note and cannot meet it, that he would have to meet it. [403]

Q. How did you find that out?

A. I just have always known that.

Q. Have you? A. Yes, sir.

Q. How long? as I have understood how——

Q. (Interposing): You tell me how long.

A. Oh, I am sure that I cannot remember how long it has been.

Q. Now, I notice, Mrs. Wallin, that some of these withdrawals were made by your husband, Glen Wallin, $4,000, on March 13, 1943, reading from Exhibit 23. Can you explain that?

A. Well, it didn't matter much whom they were made out to.

Q. What was that amount used for, do you know? A. The $4,000?

Q. Yes.

A. Well, $3,200 of it went for taxes—income taxes— and the other $800 was for our own personal use.

Q. Was the $3,200 for income taxes yours or his?

A. It was for both of our income taxes.

Q. I see. You testify that part of it was personal, and the rest of it was payment of the income taxes? A. Yes, sir. [404]

(Testimony of Mrs. Bernice Catherine Wallin.)

Q. Of yourself and your husband?

A. Yes, sir.

Q. Is that right? A. Yes, that is right.

Q. I notice that some other checks were made out to your husband also, $3,200 on September 13, 1943. Is that also income tax?

A. Yes, that is right.

Q. And there is another one on December 15, 1943, to Glen Wallin. A. That is right.

Q. And several other checks also to him. In fact, most of them are to him, aren't they?

A. Well, it didn't make much difference, did it?

Q. Well, I don't know. I am just asking if there was some reason for it. Some to you and some to him. How did you determine who would withdraw the money?

A. Well, whoever was so inclined to withdraw the money, withdrew the money.

Q. Where were your income tax returns prepared, and those of your husband, do you know?

A. Well, we collected all of our data from my husband's business, or he had his account prepared, and it was sent down to the Western Construction Company's office, and we felt there that it was gone over and it was compiled, and [405] they also employed a competent accountant that finally compiled them completely.

Q. And you told them to divide your income between you and your husband for income tax purposes? A. Yes, that is right.

Mr. Payne: That is all.

(Testimony of Mrs. Bernice Catherine Wallin.)

Redirect Examination

By Mr. Potts:

Q. Mrs. Wallin, with respect to your husband, was there anything said in any of the conversations with your father or with any of the other general partners relative to Mr. Wallin taking any active part in the Western Construction Company?

A. Well, that was one of the reasons why my husband went into the real estate business. He had always been interested in real estate, and they were hoping that they would be able to build houses—our city has increased so terrifically—and there has not been adequate housing for all the people and so they had planned, and I was planning, I believe, too—they have some property which they want to build private houses on, and he would handle the real estate.

Q. He would handle the real estate part of the matter, is that it? A. Yes, that is right.

Mr. Potts: That is all. [406]

Recross-Examination

By Mr. Payne:

Q. You never worked for the partnership, did you, Mrs. Wallin?

A. Well, no, I did not. In 1942 when I became a limited partner, I had the opportunity of adopting a baby girl, so I was quite busy at home taking care of her.

(Testimony of Mrs. Bernice Catherine Wallin.)

Q. Your father never expected you to work for the partnership, did he?

A. I would have if I had been needed.

Q. But he never asked you to, did he?

A. He didn't ask me, and he would have asked me if I had been needed.

Q. Did your husband ever work for the partnership?

A. No, he has not, but he expects to.

Q. You testified that you understood that you had an interest in your mother's estate, is that right?

A. That is right.

Q. You do not have any idea what that interest was valued at, do you?

A. I have never asked.

Q. It is still not settled in Court, is that right?

A. No, it is not settled yet.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.) [407]

Mr. Potts: I will call Glen Wallin.

Whereupon,

GLEN WALLIN

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. Will you state your name, please, and your address, Mr. Wallin?

A. My name is Glen Wallin, and I reside at 7214 Lake Ridge Drive, Seattle.

Q. And you are the husband of the witness that just preceded you on the stand?

A. Yes, sir.

Q. Mr. Wallin, when were you married to Bernice Johnson? A. On November 5, 1938.

Q. With respect to her interest, or to the interest in the Western Construction Company, a limited partnership formed in 1942, were you consulted about that matter? A. Yes, I was.

Q. With whom did you talk about it?

A. With my wife, Bernice.

Q. And what was the outcome of your conversations with [408] her with respect to the interest that she was to have or signing a note for the interest in the partnership?

A. Well, they asked her, or she wanted to put this investment in the company, and $10,000 was a lot of money, and I knew that if Bernice would put that interest in the company and sign a note for it, I would also be responsible. And whether it is a lot or

(Testimony of Glen Wallin.)

not, I don't know, but I would still be responsible. That was my understanding.

Q. Was that your understanding?

A. That was my understanding.

Q. During the formation of this partnership was there anything discussed with you about the possibility of your becoming actively engaged in the partnership?

A. Well, I had been discussing any interest that I could serve the partnership for a long time, but I had one job—the only job that I ever had in my life—and I was with one company for a long, long time, so I didn't see yet where I could possibly serve the company.

Q. With respect to the date that Mrs. Wallin signed this note, in 1942, can you give the Court any idea of your net financial worth—the net financial worth of yourself and your wife, disregarding her sole and separate estate. Just taking into consideration your community estate, can you give the Court any idea of your net financial worth?

A. Well, that was about the time—well, we were [409] contemplating building a house, so we had our money saved up for that. We had probably in cash—we figured we had around $12,000.

Mr. Potts: Your witness.

Cross-Examination

By Mr. Payne:

Q. You say it was your understanding that if your wife signed a note, that you would be responsible on it? A. Yes, sir.

(Testimony of Glen Wallin.)

Q. Who told you that?

A. Well, I have always considered it the law in this state—that it is a community property law—but whether or not it is the law, I would be responsible anyway, and I told her that I would.

Q. You told her that you would be responsible for it out of your separate estate or out of your community property? A. Yes, either way.

Q. You testified that there was some discussion about the possibility of you going into business with the Johnsons. Isn't it true that they had discussed that with all of their sons and sons-in-law in your presence at various times?

A. Well, I had a set-too with them. For two or three hours I talked with my father-in-law and also Albin. What we wanted to do—well, the way business is now, it has become so highly specialized that it takes a good education and [410] initiative to run a business. Now, I am not a college graduate, and I am not an engineer, and I cannot serve the company in that respect, but we figured by going into the real estate business, and we wanted to develop some huge private housing programs, like those of Carroll Hedlund and Hillman, that I would be in a good position to handle those deals for the company.

Q. When did you go into the real estate business?

A. In 1946.

Q. This interest to your wife was not given to her with the understanding that you were to go into the partnership, was it?

A. What do you mean?

(Testimony of Glen Wallin.)

Q. Well, you know about your wife obtaining an interest in this partnership back in 1942, don't you?

A. Oh, yes. You mean the one that she bought in?

Q. Yes. A. Yes.

Q. There was not any understanding that you were to go with the partnership in connection with that interest that she acquired. A. No.

Mr. Payne: That is all.

Mr. Potts: By the way, are you trained in insurance too? [411]

The Witness: Yes, I am.

Mr. Potts: That is all. Thank you.

(Witness excused.)

Mr. Potts: Mr. George Johnson, will you take the stand again?

Whereupon,

GEORGE JOHNSON

previously called as a witness for and on behalf of the Petitioners, having been previously duly sworn, was recalled and testified as follows:

Direct Examination

By Mr. Potts:

Q. Mr. Johnson, I have recalled you for the matter that we reserved yesterday regarding these notes.

(Handing document to witness.)

The Court: Have they already been marked?

(Testimony of George Johnson.)

Mr. Potts: No. We reserved this yesterday. So these will be 24.

The Court: These are the first two notes?

Mr. Potts: Yes, Your Honor.

The Court: They will be marked for identification as Petitioners' Exhibit 24.

(Documents above referred to marked Petitioners' Exhibit 24 for identification.)

Mr. Potts: One of these is the original [412] that Mr. Lloyd Johnson had, and we have no photostat copy.

The Court: You do not have a photostat copy?

Mr. Potts: No, so we are introducing the original, with the consent of Counsel. We will just offer that.

Mr. Payne: No objection.

The Court: They will be received in evidence as Petitioners' Exhibit 24.

(Document above referred to, previously marked Petitioners' Exhibit 24 for identification, received in evidence.)

Mr. Potts: I will have this marked Petitioners' Exhibit 25.

(Documents above referred to marked Petitioners' Exhibit 25 for identification.)

Mr. Potts: Which are the four $5,000 notes.

The Court: Yes.

Mr. Potts: We offer those in evidence.

(Testimony of George Johnson.)

Mr. Payne: No objection.

The Court: They will be received as Petitioners' Exhibit No. 25.

(Documents above referred to previously marked Petitioners' Exhibit 25 for identification, received in evidence.)

Mr. Potts: I guess I do not need to ask you any more questions, Mr. Johnson. [413]

Mr. Payne: Now that we have got him there, I guess I had better ask him some, but I think I had better wait until my case comes on.

Mr. Potts: I will give you permisson to do so.

Mr. Payne: It would not be proper cross-examination at this time, so I will wait until we put our case on.

(Witness excused.)

The Court: We will recess for ten minutes.

(Recess)

Mr. Potts: I will call Mrs. Potts.

Whereupon,

MRS. LUCILLE EASTERBROOK POTTS called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. What is your name?

A. Lucille Easterbrook Potts.

Q. You are my wife, are you?

A. That is right.

Q. And associate Counsel?

A. That is right.

Q. Mrs. Potts, when were you married? [414]

A. 1939.

Q. Prior to that time for whom had you been employed—by whom had you been employed?

A. By the Western Construction Company.

Q. When were you first employed by the Western Construction Company? A. In 1932.

Q. In 1932? A. Yes.

Q. And since 1939 have you been employed by the Western Construction Company?

A. Yes.

Q. Up to what date?

A. Oh, I worked—I still help them out once in a while but I have not really worked for several years—that is done actual work five days a week, or anything like that.

Q. Directing your attention to the formation of

(Testimony of Mrs. Lucille Easterbrook Potts.)

the limited partnership in 1942, were you in the office of the Western Construction Company at that time? A. Yes, I was.

Q. With respect to the condition of the partners at that time, I think Counsel would like to know the financial status of the partners as of the date of the formation of the limited partnership. Can you give that to us?

A. Well, Albin Johnson had—you mean before the [415] partnership was formed?

Q. Yes, immediately before.

A. He had $44,465.16.

Q. Albin had how much? A. $44,465.16.

Q. Now, what about the other two?

A. George Johnson had $92,034.28.

Q. What about J. A.?

A. He had $97,535.58.

Q. Now, how was the capital account of the general partners carried in the formation of the limited partnership in 1942?

A. Then they set up an amount of $15,000, which, incidentally, was supposed to have been $20,000, but it was set up wrong. They set up $15,000.

Q. For whom?

A. For each of the three general partners.

Q. Now, you say that that should have been $20,000. Was it ever corrected?

A. It was corrected in June of 1943.

Q. With the filing of the next certificate?

A. That is right.

(Testimony of Mrs. Lucille Easterbrook Potts.)

Q. And how was it set up then?

A. $20,000 in each of their accounts.

Q. Then what was the limited partners' [416] account?

A. They were all set up on the books.

Q. Well, I was thinking of the amount. Let us take each family. What was the limited partners' account?

A. Each family had $20,000. And it was divided sometimes two, three or four ways.

Q. Regardless of the number of limited partners that were admitted from any one of the three families, the total limited partners' interest in that family was $20,000, is that right?

A. That is right.

Q. And that equaled the general partners' interest? A. That is right.

Q. So that in 1943 the general partners' interest was $60,000, and the total of the limited partners' interest was also $60,000? A. That is right.

Q. But in 1942 the general partners' interest totaled $45,000? A. Yes.

Q. And the total limited partners' interest was $60,000? A. That is right.

Q. Now, when were the first profits entered upon the books of the company after the formation of the first limited partnership? [417]

A. After the books were closed, December 31, 1942.

Q. And were there any withdrawals by any limited partner prior to that?

(Testimony of Mrs. Lucille Easterbrook Potts.)

A. Prior to the end of 1942?

Q. Yes.

A. No. They didn't have anything to withdraw.

Q. Now, after that, in 1943, was there an earning? A. Yes, there was.

Q. For the limited partners? A. Yes.

Q. Now, who kept the books in 1943?

A. I did.

Q. Will you tell the Court whether there was any restriction of any kind upon any of the limited partners withdrawing——

A. (Interposing): No.

Q. (Continuing): any part of the whole of their earnings on their investment? A. No.

Q. Was there ever any restriction?

A. No, there was not. I took care of everybody's account.

Q. With the formation of the limited partnership in 1942, and again in 1943, were there any meetings of the limited partners held? [418]

A. No, there were not.

Q. Any minutes of any meetings, or of any committees, or boards of any kind kept? A. No.

Q. Any seal maintained? A. No.

Q. Any officers elected? A. No.

Q. Who conducted the business of the limited partnership?

A. George Johnson, J. A. Johnson and Albin Johnson.

Q. Now, will you tell the Court, with respect to

(Testimony of Mrs. Lucille Easterbrook Potts.)

the activities of Lloyd, Roy and Winston Johnson, after the formation of the limited partnerships, and both of them, what the activities of those three in the limited partnerships were?

A. Well, of course Roy worked for the company —are you asking for any particular year? I am sorry.

Q. After the formation of the first limited partnership, and again after the formation of the second, what were the activities of Lloyd, Roy and Winston with respect to the Western Construction Company?

Mr. Payne: Your Honor, that is a rather complexed question. I think if we are going into that we ought to break that down and get down to dates and individuals.

Q. (By Mr. Potts): Well, [419] let us take the year 1942 after the formation of the limited partnership.

A. Well, of course Lloyd was with Kuney-Johnson. He used to be down to the office a lot of the time. I used to call him up a lot of the time. In fact, I used to get embarrassed because I had to call him so much, and I had to ask him about this, that, and the other thing.

Mr. Payne: You are talking about Lloyd?

The Witness: Yes. Well, he was—he was down around there a lot of the time.

Q. (By Mr. Potts): Well, being down and around there a lot of the time, I am not so concerned with that. Will you tell the Court whether he did

(Testimony of Mrs. Lucille Easterbrook Potts.)

anything to further the business of the partnership in 1942.

A. Would you want specific things that he did?

Q. Yes. Anything that you recall, that he was required to do.

A. Well, he came down and helped to price jobs. He helped us to take stock as I recall. He helped us to get materials sometimes. I called him several times myself about getting material.

Q. Well, now, what about Roy in 1942?

A. Roy did more or less the same thing. I do not think that he was there quite as much as Lloyd. I don't remember now. [420]

Q. What about Winston?

A. Well, of course Winston was there all the time after the formation of the partnership, to date, practically.

Q. What kind of work did Winston do there? I am referring to the office—that part of the work that you saw.

A. He was in the office a great deal of the time. And he was out to the projects a great deal of the time. He was out getting materials a lot of the time. He let a lot of the sub-contracts. He wrote a lot of letters. He did a lot of dictating work on the letters in the office. And he went to a lot of conferences with the Navy and the Army, and so forth.

Now, let us see what else he did. In fact, he did everything. If anybody wanted him to go out and do some figuring—well, if anyone wanted him to do it, he even figured a payroll, and everything.

(Testimony of Mrs. Lucille Easterbrook Potts.)

Q. Now, with respect to 1943 what did Lloyd do, if anything to further the business?

A. I think the years—I mean, it was more or less continuous. They did the same thing in 1943 that they did in 1942.

Q. Well, would that be true of Roy?

A. Well, I guess Roy started to work in 1943—to work there all the time.

Q. What about Winston? [421]

A. Winston was there in 1943 doing the same thing, getting sub-contracts and materials, and estimating, and going out to the projects. He was out to the project part of the time, too.

Q. Going back a little, you were there during the time of Coulee Dam, were you not—during what has been testified to here as the Coulee Dam job?

A. That is right.

Q. Will you tell the Court what the financial experience of the three partners—the three older men—was on the construction of the Coulee Dam bridge piers?

A. They lost a lot of money. We didn't have any cash. There might have been some assets that were not liquid, but they didn't have any money at all, and they owed just lots and lots of bills.

Q. You heard the testimony here about the three older brothers trying to get some outside capital. Do you know anything of their quest in that regard of your own knowledge?

A. The only thing I know—they had told me that they had gone to see Philip Johnson of the

(Testimony of Mrs. Lucille Easterbrook Potts.)

Boeing Aircraft Company, and I was there when he came into the office, and I was there when he talked to them. And I heard him say that he was not interested in making an investment with them.

Q. Now, with respect to the formation of the corporation, will you tell the Court about [422] that.

A. Well, after Coulee Dam we formed a corporation—of course they were very anxious to get some more contracts to straighten the mess out that they were in. And they went down to the bank, and the bank told them that they would loan them $10,000, but they had to form a corporation, and the bank wanted them to put it in Lloyd's and my name. So the bank loaned us the $10,000, and we started the corporation, and it was Lloyd, Roy and I who had the stock.

Q. Now, did you three continue to hold that stock all the way through until the dissolution?

A. No.

Q. Tell the Court what happened to the stock?

A. Well, for one thing after I got married in 1939 I didn't want to really work anymore, and the war came along, and so I quit. And the corporation was a lot of trouble. I had to go up to Roslyn and down to Tacoma to sign papers, and all this and that, and I just didn't want to do it anymore, so I suggested that I wanted to turn my stock in, and at that time I think we transferred all of the stock.

Q. That is, Roy and Lloyd did it too?

A. Yes.

(Testimony of Mrs. Lucille Easterbrook Potts.)

Q. What was the financial condition of the partnership at that time?

A. I don't remember exactly—just exactly. I don't know the exact date that we did transfer the stock. [423]

Q. At any rate their condition improved——

A. (Interposing): Oh, yes.

Q. (Continuing): when the stock was turned back?

A. Oh, yes. Then it was all right. The bank had no objections to their having the stock.

Q. Now, showing you Respondent's Exhibit C, or the articles of co-partnership that has been testified to were executed by the three older brothers and their three sons, can you tell the Court anything about the reason for the execution of those articles

A. Well, it was to form a partnership among the six of them.

Q. Well, what was the reason that the three sons were brought in?

A. They wanted their three sons in the company very, very badly.

Q. After this agreement or these articles were signed, was that set up on your books? Did they go ahead upon the basis of those articles?

A. No, they did not.

Q. Do you know why they did not?

A. I really don't. It was just dropped.

Q. Did the fact that Lloyd Johnson had made a successful venture with Mr. Kuney have anything

(Testimony of Mrs. Lucille Easterbrook Potts.)

to do with the failure to go ahead on those [424] articles?

A. I don't remember right now. I have not seen them for a long time.

Q. Well, directing your attention as to the formation of the limited partnership, can you tell the Court the reason for the formation of that—those reasons that are of your own personal knowledge?

A. The reason that they formed——

Q. (Interposing): The reason that they formed the limited partnership?

A. The reason that they formed the limited partnership?

Q. Yes.

A. Well, there were a lot of reasons. In the first place, the construction game was not the same as it was when the Johnsons started in business. At the time that they started in business many of the companies here were carpenters who worked up to be contractors, but now it is more specialized. They needed their sons in the business. They needed that technical training. It is not the same as it was when they started in business. They have been very successful, and I do not think that there are any better contractors in the world, but business is different today than it was 25 years ago. I think that they needed their sons and sons-in-law in the business.

Q. Well, did they realize it? Did they show the realization of that fact—the three older brothers themselves? [425]

A. Well, certainly they realized it.

(Testimony of Mrs. Lucille Easterbrook Potts.)

Q. Now, was there any financial reason for the formation of the limited partnership?

A. Yes, that brought more money into the company. That was just about the beginning of the war contracts. They needed the additional capital to get bonds to carry on the work.

Q. Now, the question has been asked different witnesses by Counsel regarding the preparation of income tax returns for the limited partners. Will you explain that to the Court?

A. The preparation?

Q. The preparation of the income tax returns in the office of the Western Construction Company for the limited partners.

A. Oh, yes. Most of them were prepared in the office of the Western Construction Company. We never got our books closed at the end of the year. We always were just beating the deadline, so we used to send out—we used to make up questionnaires and send them out to the limited partners, asking them to send in all their information because we would be late again this year and we told them to send in all the information because we were always right on the deadline. It is always such a job getting the books closed at the end of the year, and everything. [426]

Q. Some of the checks in evidence on these different limited partners have been made out to the husbands of the limited partners. Was there any reason for that?

A. No. If the husband was the one who came in

(Testimony of Mrs. Lucille Easterbrook Potts.)

to get the check, the check was made out to the husband, and if the wife came in to get the check, it was made out to the wife, or whoever came in after it—it was made out in their name.

Q. Are there some of the limited partners' returns that are not yet in evidence?

A. Here are some.

Mr. Potts: I should like to introduce these. First of all I will have this one of Elsie Keil Mathewson marked for identification.

The Court: That will be marked as Petitioners' Exhibit 26 for identification.

(Documents above referred to marked Petitioners' Exhibit 26 for identification.)

Mr. Potts: We offer that in evidence.

Mr. Payne: We won't object to this.

The Court: Very well. It will be received as Petitioners' Exhibit No. 26 in evidence.

(Documents previously marked Petitioners' Exhibit 26 for identification received in evidence.)

PETITIONER'S EXHIBIT No. 26

Elsie Kiel Mathison

Jan. 1, 1942, to Dec. 31, 1945.

5/ 7/1942	Investment	$10,000.00
12/31/1942	Share of net profits	35,615.92
6/30/1943	Share of profits, 6 mos.	17,919.80
6/30/1943	Reduction of Investment	—3,333.33
12/31/1943	Net profits to 12/30/43	7,718.17
12/31/1944	Share of net profit	2,767.00
12/31/1945	Share of net profit	7,591.66
		$78,279.22

(Testimony of Mrs. Lucille Easterbrook Potts.)

Withdrawals

3/15/43	Collector of Internal Revenue	$ 3,211.54
6/15/43	Collector of Internal Revenue	1,628.52
6/15/43	Collector of Internal Revenue	1,583.01
9/14/43	Collector of Internal Revenue	1,499.37
9/14/43	Collector of Internal Revenue	1,499.37
October	Personal withdrawal	129.15
12/15/43	Collector of Internal Revenue	1,489.36
12/15/43	Collector of Internal Revenue	1,628.52
4/13/44	Collector of Internal Revenue	600.00
5/15/44	Collector of Internal Revenue	591.11
5/15/44	Collector of Internal Revenue	5.91
5/15/44	Collector of Internal Revenue	412.03
5/15/44	Collector of Internal Revenue	4.12
6/13/44	Collector of Internal Revenue	600.00
9/13/44	Collector of Internal Revenue	600.00
9/28/44	Personal withdrawal	100.00
11/10/44	Personal withdrawal	200.00
12/13/44	Personal withdrawal	200.00
3/13/45	Collector of Internal Revenue	575.74
3/13/45	Collector of Internal Revenue	577.52
3/23/45	Personal withdrawal	880.00
5/ 4/45	Dr. Harold Burkhart	284.00
12/21/45	Personal withdrawal	200.00
		$18,499.27

Brought forward		$78,279.22
12/31/46	Share of net profits	28.22
		$78,307.44
Withdrawals brought forward		$18,499.27
1/14/46	Collector of Internal Revenue	1,359.73
5/14/46	Personal withdrawal	300.00
6/18/46	Personal withdrawal	7,000.00
12/20/46	Personal withdrawal	500.00
3/14/46	Personal withdrawal	45,976.52
9/ 5/46	Personal withdrawal	1,000.00
		$74,635.52

Admitted May 25, 1948.

Mr. Potts: And I will have this one of Mrs. Vedola [427] Johnson Kent marked for identification as Petitioners' Exhibit 27.

(Testimony of Mrs. Lucille Easterbrook Potts.)

(Document above referred to marked Petitioners' Exhibit 27 for identification.)

Mr. Potts: We offer Petitioners' Exhibit 27 in evidence.

Mr. Payne: We have no objection.

The Court: Very well. It will be received in evidence as Petitioners' Exhibit 27.

(Document previously marked Petitioners' Exhibit 27 for identification was received in evidence.)

PETITIONER'S EXHIBIT No. 27

Vedala Johnson Kent

June 30, 1943, to Dec. 31, 1945.

6/30/1943	Investment	$ 6,666.66
12/31/1943	6 mos. net profit	7,718.18
12/31/1944	Share net profit	2,767.00
12/31/1945	Share net profit	7,591.66
		$24,743.50

Withdrawals

9/14/43	Collector of Internal Revenue	$ 315.80
12/ 9/....	Collector of Internal Revenue	315.80
3/ 9/44	Personal withdrawal	250.00
4/13/44	Collector of Internal Revenue	600.00
5/16/44	Collector of Internal Revenue	1,459.69
6/13/44	Collector of Internal Revenue	600.00
5/16/44	Collector of Internal Revenue	14.69
9/13/44	Collector of Internal Revenue	600.00
9/27/44	Personal withdrawal	70.00
11/16/44	Personal withdrawal	200.00
1/10/45	Personal withdrawal	75.00
3/23/45	Personal withdrawal	400.00
8/25/45	Personal withdrawal (Jesse Sumrall)	52.00
12/21/45		200.00
		$ 5,152.89

(Testimony of Mrs. Lucille Easterbrook Potts.)

Brought forward		$24,743.50
12/31/46	Share of net profit	28.22
		$24,771.72

Withdrawals Forward

1/14/46	Collector of Internal Revenue	$ 236.82
3/14/46	Collector of Internal Revenue	276.45
5/14/46	Personal withdrawal	300.00
6/18/46	Personal withdrawal	7,000.00
12/20/46	Personal withdrawal	500.00
12/31/46	Standard Service Tire	47.40
3/14/47	Personal withdrawal	6,586.25
		$20,099.91

Admitted May 25, 1948.

Mr. Potts: And I will have this one of Eleanor Rector marked as Petitioners' Exhibit 28 for identification.

(Document above referred to marked Petitioners' Exhibit 28 for identification.)

Mr. Potts: We will offer Petitioners' Exhibit 28 in evidence.

Mr. Payne: We have no objection.

The Court: It will be received as Petitioners' Exhibit No. 28.

(Document previously marked for identification as Petitioners' Exhibit 28 for identification, received in evidence.)

(Testimony of Mrs. Lucille Easterbrook Potts.)

PETITIONER'S EXHIBIT No. 28

Eleanor Rector

Jan. 1, 1942, to Dec. 31, 1945.

5/28/1942	Investment	$ 6,666.67
12/31/1942	Share of profits, 1942	23,743.94
6/30/1943	Share of profits, 6 mos.	11,946.55
12/31/1943	Share of profits, 6 mos.	7,718.18
12/31/1944	Share of profits, 1944	2,767.00
12/31/1945	Share of profits, 1945	7,591.66
		$60,434.00

Withdrawals

3/13/1943		$ 5,000.00
3/10/1944		2,000.00
4/ 6/1944		600.00
5/16/1944		7,300.00
6/13/1944		600.00
1/ 3/1944		600.00
1/10/1945		600.00
3/ 9/1945		750.00
		$17,450.00

Eleanor Rector

Jan. 1, 1946, to Dec. 31, 1947.

Balance forwarded		$60,434.00
12/31/1946	Share of net profit	28.22
		$60,462.22
Withdrawals forwarded		$17,450.00
2/20/1946		2,325.74
8/18/1947		10,000.00
		$29,775.74

Admitted May 25, 1948.

Q. (By Mr. Potts): Showing you Eleanor Rector's statement, would you read to the Court the withdrawals that were not used to pay income taxes?

A. I really don't know what was used to pay

(Testimony of Mrs. Lucille Easterbrook Potts.)

income tax. These checks are all made directly to Dr. Rector. They are as follows:

March 13, 1943, $5,000;
March 10, 1944, $2,000;
April 6, 1944, $600;
April 16, 1944, $7,300;
July 13, 1944, $600;
January 10, 1945, $600;
March 9, 1945, $750;
February 20, 1946, $2,325.74;
April 18, 1947, $10,000.

Q. Making what sum in total withdrawals?

A. $29,775.74.

Q. There has been some testimony here that Roy Johnson had overdrawn his account in the sum of $6,600, and he testified that he sent a check back in that amount. Will you tell the Court about that transaction?

A. Well, he drew out his capital, and he was up in Alaska, and I wrote him a note and told him to send back a check for $6,600 to get his capital back in, and he sent the check. [429]

Q. Did anyone direct you to do that?

A. Nobody else would have known. I was the only one who knew right then about it, so I wrote to him and told him to send it back.

Q. Would you let me look at that record of Roy Johnson—is that it? (Indicating.)

A. Yes.

Q. Now, would you tell the Court whether or not before you received the check for $6,600 there

(Testimony of Lucille Easterbrook Potts.)

was a credit to Mr. Roy Johnson's account which would have alleviated the necessity of his returning that check?

A. Oh, yes. When we closed the books—it happened in this way, we closed the books at the end of 1945, or when we were closing the books, then I discovered that he had overdrawn. The profit for that year had not been distributed. I didn't know what it was because it took quite a while to figure out the depreciation, and this and that, and the other thing, so I wrote to him to send it back right away, and he did—no, he didn't send it back right away. And then we got our profits distributed, and he got his profits on the books, and it would have been all right then.

Q. It was some time after you had written him before you got the check with the return?

A. We hardly ever got the books closed for the year before March 1st—actually closed, and everything. [430]

Mr. Potts: Your witness.

Cross-Examination

By Mr. Payne:

Q. You have before you, Mrs. Potts, Exhibit 28 admitted in evidence on behalf of the Petitioners, which I understand is the statement of the investment and the withdrawals of Mrs. Eleanor Rector. A. Yes, sir.

Q. Do you know how she received her investment in the limited partnership?

(Testimony of Lucille Easterbrook Potts.)

A. How she received her investment?

Q. Yes. Did she receive it the same as the others?

A. Yes, she received it the same as the others.

Q. In fact, all of the children involved in these two limited partnerships are in the same circumstances so far as the acquisition of their interest is concerned. A. That is right.

Q. Have you examined the copies of the income tax returns of Mrs. Rector?

A. No. I intended to do so this noon, but I really haven't had time to look them over.

Q. You do not know what part of her withdrawals were necessary to pay her federal taxes, do you?

A. No, I really do not, until I go over it a little.

Q. Are you familiar with the notes which have been the [431] subject of testimony here, Mrs. Potts? A. Yes.

Q. I show you Petitioners' Exhibit 24, which is the note given by Lloyd Johnson to his father, which is marked, "Paid, 6-30"—I will revise that. That is the note given by Lloyd on April 21, 1942, is it not? (Showing document to witness.)

A. Yes.

Q. With respect to the first partnership?

A. Yes.

Q. And it is marked, "Paid, 6-30-42."

A. 6-30-43.

Q. I stand corrected. Now, what does that mean?

(Testimony of Lucille Easterbrook Potts.)

A. Well, that is my writing, where I wrote, "Paid, 6-30-43."

Q. And how was that paid?

A. This when he gave the new note, and naturally then he wanted this one back.

Q. But he didn't pay any cash?

A. No, he didn't pay any cash, and he wanted this note back, and I didn't want it laying around, so I just marked it that way.

Q. Do you know whether any of these notes were paid during 1945?

A. Yes, they were. [432]

Q. Do you know which ones were paid—how many?

A. Well, they were paid to their fathers. I think Lloyd has paid his note.

Q. Well, are you testifying from memory now, or from records? Do you happen to know?

A. I would not have any records.

Q. You would not?

A. They paid their notes to their fathers.

Q. All you know about that is what they told you?

A. It would probably be what they told me, and what I have heard and seen.

Q. In other words, if and when they paid them, they paid them to the individuals and not through the partnership? A. Yes, that is right.

Q. Do I understand that a good many were not paid in 1945?

A. I think some of them were and some of them were not. I know some of them were paid and

(Testimony of Lucille Easterbrook Potts.)

some of them were not.

Q. Now, Mrs. Potts, you testified first about the formation of the corporation? A. Yes.

Q. And the taking of the stock in your name and in the names of Lloyd and Roy? A. Yes.

Q. When did you say that that stock was given back— [433] what year?

A. It must have been—it was either before or after I was married, and I was married in June of 1939. It was probably afterwards. It was 1939 or 1940 probably—maybe it might have been six months one way or the other.

Q. And the stock was given back to whom?

A. To J. A. Johnson, George Johnson and Albin Johnson.

Q. In fact, each of you transferred all of your stock to those three individuals, is that right?

A. That is right.

Q. Mrs. Potts, you gave some testimony about this Exhibit C, which is before you, the articles of copartnership executed January 6, 1941?

A. Yes.

Q. Were you instructed to set up books of accounts with respect to that partnership?

A. No. If I had been so instructed, I am sure that I would have done so.

Q. What was the partnership doing at that time —do you recall? A. In 1941?

Q. Yes. Where were they engaged at that time?

A. In 1941 they had the Bremerton job—January of 1941.

(Testimony of Lucille Easterbrook Potts.)

Q. That was substantial work over there, wasn't it? [434]

A. They had just barely started. I think they started around the middle of December, 1940.

Q. And carried on through 1941?

A. Until about the end.

Q. And finished at the end of 1941 some time?

A. I think that that is about the date.

Q. How do you account for the fact that nothing was ever set up on the books with respect to this partnership—if you know?

A. It has never been set up on the books, or anything.

Q. Has any distribution been made to the boys with respect to that partnership? A. No.

The Court: I have not understood—let me see if I get it right. I do not know what bearing it would have in this case, but I have not understood anybody to contend that that partnership was effected. Am I right about that?

Mr. Potts: That is right.

Mr. Payne: We want it in the record, to show the different attempts and the different tries which were made here with respect to family partnership.

The Court: My understanding of that partnership is, and I have so understood it throughout the hearing, that it was never effected. Is that right?

Mr. Potts: That is right, Your Honor. [435]

The Court: So naturally she did not set anything up on the books about it because the parties

(Testimony of Lucille Easterbrook Potts.)

themselves did not regard it as an operating partnership.

Q. (By Mr. Payne): Mrs. Potts, when the first limited partnership was formed, in February of 1942, did you set up books on that?

A. Yes, I did.

Q. Did you set them up immediately?

A. Yes, I think so.

Q. How about the one in 1943? Did you set those books up immediately? A. Yes.

Q. You gave your understanding of the reasons why the limited partnerships were formed. You said one was to bring the sons into the business; is that right? A. Yes.

Q. But that partnership provided for them coming in as limited partners, did it not?

A. Yes.

Q. Now, you stated also that it was to bring in more money into the company, is that right?

A. That is right.

Q. Did it do that, in your opinion?

A. I think it did.

Q. How? Will you please show us from the books how [436] that brought in new capital into the Western Construction Company?

A. Well, there is $60,000 in money that the limited partners have put in.

Q. I beg your pardon?

A. There is $60,000 in the amount that the limited partners have put in.

(Testimony of Lucille Easterbrook Potts.)

Q. Well, will you show the Court that on the records of the partnership?

A. Do you want me to show him each account?

Q. Yes, there are not too many.

A. All right. Winston Johnson, $10,000 and——

Q. (Interposing): Just a minute. Let us take Winston Johnson. Where did that $10,000 come from according to your books?

A. Well, without regard to the books I know where it came from. He borrowed it from his father. The books do not show that.

Q. Well, what do the books show with respect to that $10,000?

A. The books show $10,000 deposited in the bank to the credit of the Western Construction Company.

Q. Did that come out of Albin Johnson's capital account?

A. Yes, I know that it did. I know that they borrowed [437] the money from Albin Johnson. But it does not show on the books.

Q. Well, what I am getting at is, how was there an increase in the partnership investment?

A. Well, the money was deposited in the bank account.

Q. You just testified that the notes were given to their fathers individually; that the fathers held the notes, and you would not have any knowledge as to when or how those notes were paid.

A. I do know of my own knowledge that some of them were paid. I know that.

Q. But you said that they were not paid through the partnership records or accounts.

(Testimony of Mrs. Lucille Easterbrook Potts.)

A. No. I mean, they were not notes of the partnership. They were notes to George Johnson, Albin Johnson and J. A. Johnson, and when they paid them, they paid them to them.

Q. What was the partnership investment—the aggregate partnership investment just before the formation of the first limited partnership, according to the books?

A. Well, it was those three figures I gave you before, added together, of the Johnsons.

Q. The three figures that you gave us on direct examination? A. Yes.

Q. Now, can you tell me whether that figure would be [438] increased or decreased when the new partnership was formed—that aggregate figure? A. Well, there was still $60,000 more.

The Court: It seems to me that you are getting into the field of argument now. As I understand it, the new limited partnership that was evidenced by a written agreement, starts out with $60,000 capital of the general partners and $60,000 of the limited partners.

Mr. Payne: That is the second partnership, Your Honor. The first partnership was $45,000.

The Court: Well, it was, as I understand it, corrected. The witness has testified that it really meant a $60,000 capital and that later, even before the second partnership was entered into you had put on your books $60,000. Is that right?

The Witness: No. I think that the entries were all made at the same time.

(Testimony of Mrs. Lucille Easterbrook Potts.)

The Court: At the second partnership?

The Witness: Yes.

The Court: Then, as I understand it, the books show $15,000 each for the general partners, and $60,000 for the limited partners on that first partnership. And then the second partnership, as I understand it, was $60,000 for the general partners and $60,000 for the limited partners.

The Witness: That is right. [439]

The Court: And as to whether those were additional assets, well, that is a matter for argument. As I understand it the general partners have said that they had notes that were added to their assets, and they, themselves, were liable for the entire indebtedness of the partnership, and that being true, they had additional assets which would be subject to their debts. I do not want to restrict the examination, but I do not think that we will particularly get anywhere by arguing it.

Mr. Payne: I will try to avoid arguing with the witness about that.

The Court: Very well.

Q. (By Mr. Payne): Let me ask you this question, Mrs. Potts, turning to the account of Winston Johnson that you made mention of a moment ago——

A. (Interposing): That is the one I happened to open first.

Q. You show there a $10,000 credit on what date? A. May 7, 1942.

(Testimony of Mrs. Lucille Easterbrook Potts.)

Q. And did that much cash come into the partnership? A. Yes, it did.

Q. Where?

A. It was deposited in the bank. We have the deposit slip showing where it was deposited. [440]

Q. Do you know where the money came from?

A. He borrowed it from his father.

Q. Did the money come out of the partnership that went for that?

A. His father used the money out of the partnership.

Q. Will you turn to the records and show us the withdrawal of that money that went to Winston for that $10,000.

A. Yes. His father drew out $20,000. I presume it was the same $20,000.

Q. What date was that?

A. April 21, 1942.

Q. And then it came back immediately, following that, in the respective accounts of the children of Albin, is that right?

A. That is right. We deposited the $10,000 that Winston gave us, and the $10,000 that Elsie Keil gave us.

Q. And is that true of each of the other families? The checks went out from the father in each case to his children immediately before the deposit was made back in the name of the children?

A. Certainly. They loaned the children the money.

Q. The checks were drawn on the partnership

(Testimony of Lucille Easterbrook Potts.)

account, and the deposit came back into the partnership account? A. Yes, sir.

Q. Did you receive instructions from anyone, Mrs. Potts, [441] with respect to paying checks to the husbands of the girls who were members of the limited partnership?

A. Well, no—no, I don't think so.

Q. You just did that on your own responsibility?

A. I think they probably knew. I think everybody knew what I was doing. I wrote all the checks. I paid the personal bills and everything else of all the Johnsons without asking.

Q. Mrs. Potts, I show you a document which is marked as Respondent's Exhibit B, the partnership return for 1942. That is the first limited partnership. I call your attention to the schedule. You are familiar with this return, aren't you?

A. I didn't make it out. I don't make out income tax returns.

Q. Well, I call your attention to the schedule attached to that return, showing contracts completed from which profits were received in that year.

A. Yes.

Q. Will your books show when the Coast Guard job was begun?

A. Not these books here—no.

Q. Do you know when it was begun?

A. Oh, heavens, no, I don't remember.

Q. Do you remember when the cold storage job was begun? [442]

(Testimony of Lucille Easterbrook Potts.)

A. I remember the jobs, but I do not remember when they were started or finished.

Q. Do you have the books in the Courtroom that show that?

A. No, I do not. After the jobs are finished, the records are transferred to old files.

Q. Who would know when those contracts were entered into?

A. Well, we could look it up. We do not have that information here right now.

Q. You do not know which one of the general partners would know about that?

A. No, I do not.

Q. Mrs. Potts, after the limited partnership in 1942 was formed did you carry two accounts on the partnership books? A. Yes, we did.

Q. Now, what were they? Will you explain that, please?

A. You mean of the general partners?

Q. Well, did you carry one account for the limited partnership itself?

A. May I have that question again?

Q. As I understand it, the first limited partnership, it had a stated capital of $105,000; is that correct? A. That is right. [443]

Q. Did you set that up in one account on the books? A. No.

Q. Now, I will ask you this, after you set up the $105,000 stated capital to the members of that limited partnership, plus the accounts to the general partners, was there an amount, or a credit still to the account of the general partners?

(Testimony of Lucille Easterbrook Potts.)

A. Yes, there was.

Q. And you set that off in a separate sheet on your books? A. Oh, yes.

Q. So that——

A. Interposing): Or some bookeeper did. I didn't do it.

Q. And was that money, or is it your understanding that money was still used in the business the same as before?

A. Yes, and they used it to draw against, too, all the time.

Q. And it was used in connection with the continuation of the partnership business?

A. And for their drawings.

Q. Do your records show what their borrowings were in 1942 and 1943—the amount of the borrowed money?

A. I am sorry, I do not have that book here. Those sheets were transferred. I did not know that you wanted them. [444]

Q. You do not remember of your own knowledge what the borrowings were?

A. No, but if I am not mistaken, at the time that they formed the limited partnership—at the time that they formed it, they owed the bank about $80,000, if I remember correctly. They owed the bank then that much when the limited partnership was formed.

Q. When we come back in Court tomorrow could you have the information about the borrowings of 1942, 1943, 1944 and 1945?

(Testimony of Lucille Easterbrook Potts.)

A. I do not know if I could have them here by tomorrow morning at 9 o'clock. I will try to have them here by that time.

Q. I thought that you were going to have all these books here.

A. I thought you wanted the current books. I am sorry. Otherwise, I would have had them here.

Q. I would like to have that information tomorrow morning if that information is available.

The Court: I think we will recess until tomorrow morning at 9:30 so that will give her a little more time to get that information.

Mr. Payne: That is all at this time.

Mr. Potts: That is all.

(Witness excused.) [445]

Mr. Potts: At this time I should like to read into the record certain citations from Remington's Revised Statutes of the State of Washington relative to the formation of limited partnerships.

The Court: Well, Mr. Potts, we take judicial notice of that.

Mr. Potts: Well, I will just give you the citations, if Your Honor please.

The Court: You can if you want to.

Mr. Potts: I thought it might be helpful for the records, perhaps.

The Court: I would hardly think so. I am not objecting to it, but in your brief you will probably cite and quote the statutes from Washington.

Mr. Potts: Well, Your Honor takes judicial cognizance of the statutes——

The Court: (Interposing): We do.

Mr. Potts: (Continuing): Why it is not necessary for me to cite them at this time.

The Court: We do. We take judicial knowledge of all State statutes, and we do not have to be proved. Of course if you had a foreign statute, for example, that of Sweden, you would have to prove that. You would have to prove foreign law, but the laws of the States of the United States do not have to be proven. [446]

Mr. Potts: Well then I can shorten the record to that extent.

The Court: I do not think it will be necessary to cite those statutes now because in your brief, I dare say, you will refer to the statutes and quote them, and your brief is where we look at the law, and the record of the evidence is where we look for the facts.

Mr. Potts: Very well.

Mr. Payne: Could I recall Mrs. Potts for one or two questions?

The Court: Yes, you may.

Whereupon,

MRS. LUCILLE EASTERBROOK POTTS

a witness previously called on behalf of the Petitioners, resumed the stand, having been previously sworn, was examined and testified as follows:

Cross-Examination
(Continued)

By Mr. Payne:

Q. Mrs. Potts, you have heard the testimony in this proceeding about the amounts paid to Winston and to Roy Johnson in connection with their services for the partnership? A. Yes.

Q. Can you tell the Court whether or not withholding taxes were taken from the amounts so paid then? A. Yes, they were. [447]

Q. Throughout all the years in which compensation was paid them?

A. As far as I know they were.

Q. The same as in the case of any other employee? A. That is right.

Mr. Payne: That is all.

(Witness excused.)

Mr. Potts: In the morning, if the Court please —we haven't the records here at this time, but in the morning we should like the privilege of introducing or offering certain contracts with the Navy to show the limited partnership with respect to those contracts. That is, how the contract was prepared setting forth the limited partnership.

I believe with that exception the Petitioners now rest their case.

The Court: Very well.

Mr. Payne: If Your Honor please, at this time we should like to offer to the Court an agreed stipulation of certain facts in the proceeding, which has been in process for a time, and I think it verifies some matters for the Court, and it does cover the agreement we have with respect to several of the issues that we made in the opening statement.

The Court: Very well. The stipulation of the parties will be received in evidence in the case.

Mr. Payne: With agreement of Counsel we should [448] like to offer at this time the partnership returns of the Western Construction Company for the remaining years which are before the Court.

The Court: Well, I suggest that you offer them one at a time, Mr. Payne. Begin with Exhibit D.

Mr. Potts: We have no objection.

Mr. Payne: The 1942 return is already in evidence. We offer at this time, Your Honor, the partnership return for 1943.

The Court: It will be received as Respondent's Exhibit D.

(Document above referred to, marked Respondent's Exhibit D, received in evidence.)

Mr. Payne: And the next is the return for 1944.

The Court: It will be received as Respondent's Exhibit E.

(The document above referred to, marked Respondent's Exhibit E, received in evidence.)

Mr. Payne: And the next is the partnership return for 1945.

The Court: It will be received in evidence as Respondent's Exhibit F.

(Document above referred to, marked Respondent's Exhibit F, received in evidence.)

Mr. Payne: If Your Honor please, I would like to [449] show the Court at this time a mimeographed copy of the findings of fact and the opinion of the Court in the previous proceeding involving the individuals there—the general partners of the Western Construction Company—which involved the taxable year 1941. There are in that opinion findings of fact, beginning on Page 3, which are about some general matters pertaining to when Albin Johnson came into the partnership, and their activities, and the results of their activities. And then beginning on Page 8 some further findings of fact about the Western Construction Company, and the activities that they had at Bremerton and the West Park Housing Project with the West Coast Construction Company, and facts relating to that contract, and the borrowings of money, and the result of that contract, and so forth.

We should like to offer that in evidence for the purpose of the findings of fact in that opinion, with the understanding that the facts stated in that opinion are true and correct and may be accepted as fact in this present proceeding. It gives some background that we think is essential, and it will save us some time in going over some of the details contained therein.

Mr. Potts: The Petitioners, Your Honor, have no objection to Counsel introducing the fact as set forth in the opinion. However, I want to call Your Honor's attention that the facts introduced in that case of course are not the [450] facts as all introduced in this case, with some exceptions. Consequently the opinion of the Court is that case—I might read from paragraph 14, or from Page 14, which deals with the community property of Rose and Albin Johnson, and it says. "However, neither Albin's partnership's interests—" I might go a little further. "The knowledge, experience, ability and personal care and attention of the partners were required to develop the rights and produce the income, and on the basis of the evidence we think that these elements were of far greater importance in the production of income than were any property rights or interests. Coming from a married man, these interests constitute a community contribution."

Now, in this case the facts are more fully introduced, and I do not think that the same conclusion can be drawn, and I dislike to have an opinion of the Court introduced into the case.

The Court: The opinion certainly would not be admissible, because there is no res judicata here that I can see at all.

Mr. Payne: No, Your Honor. We are not making any such contention.

The Court: If there are some facts stated in this case which you think would be stated more briefly and to the point, and to prove them, could you not

stipulate those facts and offer them as a stipulation in evidence? [451]

Mr. Potts: I would stipulate that any facts contained in this Court decision—I would agree should be admitted in evidence here.

Mr. Payne: That is all we expected to do, Your Honor. We did not expect the opinion to go in as facts.

The Court: No.

Mr. Payne: But the findings of fact to be accepted as the background of the facts in this proceeding.

The Court: Well, would it not be better rather than for us to have to search them out, we adjourn and let you read that into the record tomorrow—the fact that you want to go into evidence here in this case, and it will save us the task of having to look through this or that?

Mr. Payne: Very well.

Mr. Potts: As far as the Petitioners are concerned, we think that that would be the more satisfactory method of introducing them.

The Court: I would think that it would, just reading them into the record.

Mr. Payne: Considerable evidence was given, as you recall, about the background of this partnership, about the Coulee Dam conditions, and the Erickson relationship or the West Coast relationship with the Western Construction Company. I did not cross-examine regarding those things because I felt that the data which we thought were important [452] about those, the Bremerton Housing

Project and the period involved, and all those things, could be obtained for the record by reading them into the record from this.

The Court: It would short-cut the thing if you would read it into the record.

Mr. Potts: I have no objection to Counsel reading the statement of fact into the record.

The Court: Very well. The reason I would suggest that—well, I would not allow you to read into the record anything that does not have anything to do with this transaction. If it all does, why all right.

Mr. Payne: Well, Your Honor, it would be used as a basis for argument. For example, the contract there was very successful, and there was a very substantial profit made by the partnership in 1941 which, we think, forms the psychological background for the formation of the partnership in 1942, and there is a showing in that record of the borrowed money which was necessary to conduct the business, and so forth.

The Court: Yes.

Mr. Payne: Which is, in our opinion, pertinent background.

The Court: Well, in the morning you can do that. Apparently the Petitioners have no objection to introducing these facts into the record.

Mr. Payne: Well, the facts are rather compact and [453] rather short in that opinion—the findings of fact in that opinion. I think it would be satisfactory just to introduce it alone—just have the findings of fact and not have the opinion, of course.

The Court: Well, if you want to do that, we can just cut out the opinion part and not have it before us at all, and just receive the findings of fact.

Mr. Payne: That is all I intended to offer. In fact, that was the preface to my statment. Those are all fact there, and whichever party wishes to, that party could refer to them as facts in this proceeding.

Mr. Potts: That will begin on Page 3 and end on Page 5?

Mr. Payne: Well, the findings of fact are set out very clearly with proper preface in each case. The findings of fact were supplied in two sections, one beginning on Page 3, and the other, I think, on Page 8.

The Court: Now, let us receive in evidence Pages 3 and 5—where is Page 4 in this? It just says 3 and 5.

Mr. Potts: The lettering may be different there than Counsel's.

Mr. Payne: The copy, Your Honor, that you have is a different mimeographed one than the one which Mr. Potts has, and the pages are apparently different. One is mimeographed on both sides, and the other is not. [454]

The Court: Oh, I see. That is where Page 4 is. All right.

In this case of Albin Johnson and others, as I understand it, Docket numbers are 5856, 5857, 5876, 5877 and 5878, Respondent offers in evidence the findings of fact contained on Pages 3, 4 and 5 in

that case, and you want all the findings of fact on issues 2 and 3——

Mr. Payne (Interposing): Yes, appearing on Page 8 and——

The Court (Interposing): Appearing on Pages 8, 9, 10, 11 and down to the middle of Page 12 received in evidence?

Mr. Payne: That is correct, your Honor.

The Court: And those facts are received in evidence, but it is understood that none of the opinion is before the Court in any way in this case.

Mr. Payne: That is correct, your Honor.

Mr. Potts: That is fine.

The Court: I think it will be well to number that or letter that, rather, as Respondent's Exhibit G, because it is an exhibit. Those pages can be pinned together and offered. The opinion is not offered at all.

(Document above referred to, marked Respondent's Exhibit G, received in evidence.)

Mr. Payne: If your Honor please, there has been testimony on some of these limited partners concerning the [455] amounts withdrawn for purposes of paying their federal taxes. In some cases they are fully identified in the exhibits already in evidence. In other cases so called personal withdrawals were made, and they, in fact, were in payment of federal taxes, which were paid directly by the individuals rather than by the Western Construction Company.

We have obtained from the Collector of Internal Revenue tax statements with respect to the limited partners and their respective spouses, with the ex-

ception of Eleanor Rector and her husband, who live in Ohio, and we have prepared from those statement schedules which show part of the same information which is already in the Petitioners' exhibits as to the withdrawals, but show further the tax payments or the tax application with respect to each limited partner and their spouse, with the exception of Eleanor Rector and her husband, and we should like to offer at this time, your Honor, those schedules as a joint exhibit. I understand that Mr. Potts has no objection.

I might state that the only purpose I am offering them for is to show the actual amounts of the withdrawals which were used for tax payments.

The Court: Well, if you want to offer it as a joint exhibit, it will be received as Joint Exhibit 29-H.

Mr. Potts: Well, I do not know, if the Court please, that I want to join in the introduction of that. [456] However, I have no objection to the exhibit.

The Court: You have no objection to it?

Mr. Potts: No.

The Court: Well, it will be received as Respondent's Exhibit H.

Mr. Payne: Yes.

(Document above referred to, marked Respondent's Exhibit H, received in evidence.)

RESPONDENT'S EXHIBIT H

Comparison of Charges (amounts paid to or on behalf of) to limited partners accounts with income taxes paid to the Collector and interest paid to the general partners.

Limited Partner	Children of
1. Bernice Wallin)	
2. Lloyd W. Johnson)	George J. Johnson
3. Rachel Gustafson)	
4. Betty Lorraine Ellingson)	
5. Roy W. Johnson)	
6. Evelyn Jorgens)	J. A. Johnson
7. Eleanor Rector)	
8. Winston A. Johnson)	
9. Elsie Keil)	Albin Johnson
10. Vedola J. Kent)	

Harold and Betty Ellingson

Date	Charges to Partnership Account	Tax Payments Harold On 1942-1943 Liability		Tax Payments Betty On 1942-1943 Liability		Tax Payments Harold On 1944 Liability		Tax Payments Betty On 1944 Liability		Interest to Father March 1945	Excess of Charges Over Tax Payments
9/14/43	$222.54	9/13/43	$111.27	9/13/43	$111.27						None
12/ 9/43	222.64	12/15/43	111.32	12/15/43	111.32						None
4/31/44	350.00							3/15/44	$350.00		None
4/11/45	1,700.00	4/ 1/45	820.83	4/ 1/45	855.60						23.57
7/30/43	1,000.00										1,000.00
8/12/43	1,000.00										1,000.00
9/13/43	1,676.23	9/15/43	820.73	9/15/43	855.50						None
12/ 9/43	1,700.00	12/15/43	820.93		855.70						23.37
4/10/44	600.00					4/15/44	$300.00	4/15/44	$300.00		None
5/15/44	327.97	5/15/44	327.97								None
5/15/44	3.28		Int. 3.28								None
5/15/44	329.22			5/15/44	329.22						None
5/15/44	3.29				Int. 3.29						None
6/13/44	600.00					6/15/44	300.00	6/15/44	300.00		None
9/13/44	600.00					9/21/44	300.00	9/21/44	300.00		None
12/16/44	600.00					12/19/44	300.00	12/19/44	300.00		None
3/12/45	700.00	3/15/45	346.11	3/15/45	347.37						6.52
3/ 1/45	2,000.00										2,000.00
										$719.42	(719.42
	$20,339.99		$3,960.68		$4,102.28		$1,200.00		$1,200.00	$719.42	$9,157.61

Harold and Betty Ellingson

Date	Charges to Partnership Account	Tax Payments Harold On 1942-1943 Liability		Tax Payments Betty On 1942-1943 Liability		Tax Payments Harold On 1944 Liability		Tax Payments Betty On 1944 Liability		Interest to Father March 1945	Excess of Charges Over Tax Payments
9/14/43	$222.54	9/13/43	$111.27	9/13/43	$111.27						None
12/ 9/43	222.64	12/15/43	111.32	12/15/43	111.32						None
4/31/44	350.00							3/15/44	$350.00		None
5/15/44	409.64	5/15/44	409.64								None
5/15/44	354.25			5/15/44	354.25						None
5/15/44	3.54				Int. 3.54						None
6/13/44	350.00							6/19/44	350.00		None
9/13/44	350.00*										350.00
12/11/45	200.00										200.00
										$300.00	(300.00)
	$2,462.61		$632.23		$580.38				$700.00	$300.00	$250.00

* Partnership Records show Collector as Payee, item not shown in 899.

Roy W. and Elsie A. Johnson

Date	Charges to Partnership Account	Tax Payments Roy W. On 1942-1943 Liability		Tax Payments Elsie A. On 1942-1943 Liability		Tax Payments Roy W. On 1944 Liability		Tax Payments Elsie A. On 1944 Liability		Interest to Father March 1945	Excess of Charges Over Tax Payments
3/13/43	$3,000.00	3/15/43	$979.58	3/15/43	$1,053.75						$966.67
6/15/43	2,050.00	6/26/43	979.58	6/26/43	1,053.75						16.67
9/13/43	2,050.00	9/15/43	715.58	9/15/43	977.80						356.62
12/28/43	2,050.00	12/15/43	715.58	9/15/43	977.80						356.62
4/10/44	600.00					4/15/44	$300.00	4/15/44	$300.00		None
5/15/44	380.92	5/15/44	380.92								None
5/15/44	3.81		Int. 3.81								None
5/15/44	532.13			5/15/44	532.13						None
5/15/44	5.32				Int. 5.32						None
6/13/44	600.00					6/19/44	300.00	6/19/44	300.00		None
9/13/44	600.00					9/22/44	300.00	9/22/44	300.00		None
1/10/45	1,000.00										1,000.00
3/ 1/45	20,000.00										20,000.00
3/13/45	455.61	3/15/45	455.61								None
3/13/45	457.48			3/15/45	457.48						None
6/26/45	10,000.00										10,000.00
7/30/45	9,000.00										9,000.00
										$719.42	(719.42)
	52,785.27		$4,230.66		$5,058.03		$900.00		$900.00	$719.42	$40,977.16

Stanley and Evelyn L. Jorgens

Date	Charges to Partnership Account	Tax Payments Stanley On 1942-1943 Liability		Tax Payments Evelyn On 1942-1943 Liability		Tax Payments Stanley On 1944 Liability		Tax Payments Evelyn On 1944 Liability		Interest to Father March 1945	Excess of Charges Over Tax Payments
2/ ../43	$3,000.00										$3,000.00
3/13/43	3,000.00	3/15/43	$820.83	3/15/43	$855.60						1,323.57
4/31/43	1,500.00										1,500.00
7/17/43	1,700.00	7/ 1/43	820.83	7/ 1/43	855.60						23.57
7/30/43	1,000.00										1,000.00
8/12/43	1,000.00										1,000.00
9/13/43	1,676.23	9/15/43	820.73	9/15/43	855.50						None
12/ 9/43	1,700.00	12/15/43	820.93		855.70						23.37
4/10/44	600.00					4/15/44	$300.00	4/15/44	$300.00		None
5/15/44	327.97	5/15/44	327.97								None
5/15/44	3.28		Int. 3.28								None
5/15/44	329.22			5/15/44	329.22						None
5/15/44	3.29				Int. 3.29						None
6/13/43	600.00					6/15/44	300.00	6/15/44	300.00		None
9/13/44	600.00					9/21/44	300.00	9/21/44	300.00		None
12/16/44	600.00					12/19/44	300.00	12/19/44	300.00		None
3/12/45	700.00	3/15/45	346.11	3/15/45	347.37						6.52
3/ 1/45	2,000.00										2,000.00
										$719.42	(719.42)

Date	Charges to Partnership Account	Tax Payments Winston On 1942-1943 Liability		Joyce B. On 1942-1943 Liability		Tax Payments Winston On 1944 Liability		Joyce B. On 1944 Liability		Interest to Father March 1945	Excess of Charges Over Tax Payments
3/15/43	$4,434.76	3/15/43	$4,434.76								None
6/15/43	4,434.77	7/ 1/43	4,434.77								None
9/13/43	4,434.76	9/15/43	4,434.76								None
10/25/43	275.00										$ 275.00
12/ 9/43	4,434.76	12/12/43	4,434.76								None
1/ 6/44	1,000.00										1,000.00
4/13/44	600.00					4/15/44	$300.00	4/15/44	$300.00		None
5/15/44	1,280.51	5/15/44	1,280.51								None
5/15/44	Int. 12.80		12.80								None
6/14/44	600.00					6/15/44	300.00	6/15/44	300.00		None
6/20/44	508.50										508.50
6/13/44	525.00										525.00
6/12/44	25.00										25.00
9/13/44	600.00					9/29/44	300.00	9/29/44	300.00		None
1/11/45	600.00					1/23/45	300.00	1/23/45	300.00		None
3/12/45	1,672.08	3/15/45	1,672.08								None
3/23/45	880.00										880.00
12/31/45	200.00									$880.00	200.00
	$26,517.94		$20,704.44				$1,200.00		$1,200.00	$880.00	$2,533.50

Rudolph and Elsie Keil [Peneil Notation] Now Mathison.

Date	Charges to Partnership Account	Tax Payments Rudolph On 1942-1943 Liability		Elsie On 1942-1943 Liability		Tax Payments Rudolph On 1944 Liability		Elsie On 1944 Liability		Interest to Father March 1945	Excess of Charges Over Tax Payments
3/15/43	$3,211.54	3/15/43	$1,583.02	3/15/43	$1,628.52						None
3/15/43	1,628.52			7/ 1/43	1,628.52						None
3/15/43	1,583.01	7/ 1/43	1,583.91								$ (.90)
9/14/43	1,499.37			9/15/43	1,499.37						None
10/14/43	1,499.37	9/15/43	1,499.37								None
Correction	129.15			9/15/43	129.15						None
12/15/43	1,489.36	12/15/43	1,489.36								None
12/15/43	1,628.52			12/15/43	1,628.52						None
4/13/44	600.00					4/15/44	$300.00	4/15/44	$300.00		None
5/15/44	591.11	5/15/44	591.11								None
5/15/44	5.91	Int.	5.91								None
5/15/44	412.03			5/15/44	412.03						None
5/15/44	4.12			Int.	4.12						None
6/13/44	600.00					6/19/44	300.00	6/19/44	300.00		None
9/13/44	600.00					9/22/44	300.00	9/22/44	300.00		None
9/28/44	100.00										100.00
11/10/44	200.00										200.00
12/13/44	200.00										200.00
3/13/45	575.74			3/15/45	575.74						None
3/13/45	577.52	3/15/45	577.52								None
3/23/45	880.00										880.00
5/ 4/45	284.00										284.00
12/21/45	200.00										200.00
										$876.65	(876.65)
	$18,499.27		$7,330.20		$7,505.97		$900.00		$900.00	$876.65	$986.45

Warren L. and Vedola Kent

Mr. Potts: With the permission of Counsel, if the Court please, I would like to put Mrs. Potts back on the stand. She has found an error in some of the figures that she has testified to, and she wishes to correct that error.

The Court: Very well.

Whereupon,

MRS. LUCILE EASTERBROOK POTTS

recalled as a witness for and on behalf of the Petitioners, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. You wish to correct some of your testimony with respect to the partnership accounts immediately previous to the formation of the first limited partnership, is that right?

A. When I read those figures I included some personal real estate of George and J. A. Johnson that had no business [457] in the partnership. So the figures should be as follows:

Albin Johnson, $44,465.16;

George Johnson, $48,803.10;

and J. A. Johnson, $34,231.42, which was their capital as of December 31, 1941.

Mr. Potts: Your witness.

Cross-Examination

By Mr. Payne:

Q. What are you now reading from, Mrs. Potts?

(Testimony of Mrs. Lucile Easterbrook Potts.)

A. An audit report. I have checked it with the books.

Q. What were you reading from before?

A. The books. I had some personal real estate of George Johnson and J. A. Johnson. That was never supposed to have been on the books, and at that time we had taken it off.

Q. How long had it been on the books?

A. Oh, I don't know. It was just carried there for convenience.

Q. When did you first come into the partnership? A. In 1932.

Q. Were they there when you came there?

A. I think so.

Q. So they were on the books there from the time that you came there until 1942, is that right?

A. They carried it on the books, yes, and we set it up in a separate account. [458]

Q. And it was taken off when?

A. At that time, January 1, 1942. It was taken off then.

Q. I thought that the new partnership was not formed until February 24, 1942.

A. I don't know what you mean.

Q. The new partnership—the new limited partnership was not formed until February 24, 1942, isn't that right?

A. Yes. And you wanted the figures as of January 1, 1942?

Q. No, I wanted them as of the date of the formation of the new partnership.

(Testimony of Mrs. Lucile Easterbrook Potts.)

A. Oh, I was not giving you the figures—I was giving them to you as of the end of the year.

Q. I thought you were testifying that you were giving us the figures as of the date before and after the formation of the limited partnership in 1942.

A. They were substantially the same.

Q. I cannot hear you.

A. They were substantially the same, I would imagine.

Q. But the figures that you have just read now are after taking out certain personal assets of J. A. Johnson and George Johnson?

A. Yes, sir, that is right.

Q. Which have been on the partnership books ever since [459] you have had anything to do with them. A. That is right.

Mr. Payne: That is all.

Redirect Examination

By Mr. Potts:

Q. Can you tell us what those assets consist of, which is not used for partnership purposes?

A. Real estate most of it is—a vacant lot.

Q. But I mean, it is not a part of the construction business?

A. Oh no. Most of it is just a vacant lot.

Mr. Potts: That is all.

(Testimony of Mrs. Lucile Easterbrook Potts.)

Recross-Examination

By Mr. Payne:

Q. Were they used, Mrs. Potts, for the purpose of listing assets to the bonding company?

A. They are personal assets.

Q. That which you just testified to, as belonging to George and J. A. Johnson?

A. They always listed all their assets.

Q. In making bank statements of assets for the purpose of giving loans?

A. They always list all of their assets—yes. They would not leave those off.

Q. Now, let me ask you this, were they used for [460] similar purposes after the formation of the limited partnership?

A. Well, they were their own personal assets.

Q. Yes, but I am asking you if they were similarly used for those purposes afterwards.

A. When they furnished their own personal financial statements, they used all their assets—naturally.

Q. So there was no change than except just the way you switched them on the books, was there, after the formation of the limted partnership in 1942?

A. They were their own personal assets in their own personal names.

Q. That is my understanding too. There was no change except the change you made on the books?

A. That is right.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.)

Mr. Payne: I understand that the Petitioner has concluded his evidence, Your Honor.

The Court: Yes.

Mr. Payne: We would like to get from Mrs. Potts in the morning if we could the statements showing the borrowed money of the partnership in 1942, 1943, 1944 and 1945, and we have one or possibly two other witnesses, which will take a [461] very short time in the morning. We ought to conclude in a very short while tomorrow.

The Court: Well, we will recess until 9:30 in the morning, and I imagine that we will have no difficulty in concluding the case by noon.

Mr. Payne: We ought to be able to conclude the case in an hour so far as we are concerned. And that well might give us an opportunity to check through our notes and our files.

The Court: That is perfectly satisfactory. We will get through all right. So we will now recess until 9:30 tomorrow morning.

(Whereupon, at 5:20 p.m., a recess was taken until 9:30 a.m., May 26, 1948.) [462]

May 26, 1948

Mr. Potts: If the Court please, I reserved a matter last night regarding two contracts, and instead of having them identified I have shown them to Counsel, and they are just two small matters, and I should like to, without having these marked as exhibits, show them to Mr. George Johnson and ask him about them.

The Court: All right.

Mr. Potts: Mr. Johnson, will you take the stand again?

Whereupon,

GEORGE JOHNSON

recalled as a witness for and on behalf of the Petitioners, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. Showing you, Mr. Johnson, what purports to be a contract, can you tell the Court if this is a contract for construction—this instrument that I am showing you? Do you identify that?

A. Yes. This is much later, isn't it?

Q. Yes. The date is in 1944. Do you identify the document? A. Yes. [465]

Q. What is that document?

A. Well, this is the building contract for the Naval Air Station up at Whidby Island. We built——

(Testimony of George Johnson.)

Q. (Interposing): Well, who is that contract made with? Who are the contracting parties?

A. Well, the Western Construction Company and the Navy.

Q. All right. Now, when you say, "The Western Construction Company," will you read to His Honor the wording of the document as respects the party who is going to do the work—the contractor.

A. The Western Construction Company, a partnership, consisting of three general partners, J. A. Johnson, George Johnson and Albin Johnson, and ten limited partners.

Q. All right. And the date of this contract, please. A. The 21st day of August, 1944.

Q. All right. Now, showing you another document, will you tell the Court what that document is?

A. Well, this is a contract between the Bureau of Yards and Docks, Navy Department, and the Western Construction Company.

Q. Now, will you read to the Court the designation of the Western Construction Company as set forth in that document?

A. J. A. Johnson; George Johnson and Albin Johnson, [466] as general partners, and the ten limited partners.

Q. And the date of that contract?

A. This is the 14th day of September, 1944.

Q. Now, Mr. Johnson, Counsel asked us last night to get some information for him regarding the Quartermaster warehouse; the Rainier Vista

(Testimony of George Johnson.)

Project; the cold storage project and the Coast Guard Project, and particularly the progress schedules. We made an effort, did we not, to locate the progress schedules in your warehouse last night?

A. We were over to the warehouse trying to find the progress schedules, and in refreshing my mind——

Q. (Interposing): Well, did we find any?

A. We didn't find any.

Q. Can you give an estimate—first of all, with Counsel's permission, may I read the dates?

Mr. Payne: Yes. I have no objection.

Q. (By Mr. Potts): I will ask you if these dates are corerct, the date of the contract for the Quartermaster warehouse as July of 1941?

A. Yes.

Q. That was when it was entered into?

A. That was when the contract was entered into.

Q. And for the Rainier Vista Project, September, 1941? A. That is correct. [467]

Q. And the cold storage project, June, 1942?

A. That is right.

Q. And the Coast Guard, May, 1942?

A. That is correct.

Q. Now, can you tell the Court how much of the work—you had personal charge of the Quartermaster warehouse, did you not? A. Yes.

Q. And you were familiar with the progres generally of the Ranier Vista? A. Yes, sir.

Q. Can you tell the Court approximately how much of that work was completed, first, on the

(Testimony of George Johnson.)

Quartermaster warehouse when this first limited partnership was formed, to wit, Febraury 24, 1942?

A. Well, I would say it possibly was completed close to 40 per cent.

Q. Now, with respect to Rainier Vista, what would you estimate that?

A. Well, that was not as far on. We had had considerable trouble there on account of getting material, and also it was right in the rainy season. I would say between 25 and 30 per cent.

Mr. Potts: Do you want this information about these notes, or will you wait until Mrs. Potts gets here? [468]

Mr. Payne: Let us wait until Mrs. Potts gets here.

Mr. Potts: Very well. Your witness.

Cross-Examination

By Mr. Payne:

Q. Mr. Johnson, in connection with your testimony relating to the Quartermaster—what do you call it——

A. (Interposing): Quartermaster warehouse.

Q. (Continuing): I show you the partnership return for 1942, in evidence as Respondent's Exhibit B, and call your attention to the schedules of contracts completed that year, and ask you if that is the same item listed as Quartermaster on that schedule. I ask you if that is the same contract.

A. That is correct.

Q. The Quartermaster contract?

(Testimony of George Johnson.)

A. Yes.

Q. And the total cost of that contract?

A. The total cost of that contract was $1,324,-737.53.

Q. And what was the amount received under that contract by the partnership?

A. This column shows a complete—that is the complete column. (Indicating.)

Q. That is the completed figure on that?

A. Well, I am asking you. Is this the column that shows when the job was completed? I am asking that for my [469] information. This column was when the job was completed, is that right?

Q. Yes. A. $1,559,593.73.

Q. And the gross profit on that contract?

A. Gross profit of $234,866.20.

Q. And that is the one you say was about 40 per cent completed at the time of the formation of the first limited partnership?

A. That is right. This is the gross profit, as I understand it.

Q. Yes. That is the gross profit, all of which was reflected—all of the profits which went to the respective parties?

A. I am not a bookkeeper. There was something later on taken out of that there. It looks like a pretty good profit but——

Q. (Interposing): I am not trying to trick you, Mr. Johnson. The return is in evidence and there is no question about the partnership profit as such. I am simply trying to identify that in the record.

(Testimony of George Johnson.)

Now, the Rainier Vista is the one that you testified about as being about 25 or 35 per cent completed at the time of the formation of the first limited partnership, is that right? A. Yes. [470]

Q. And the cost of that? A. $1,551,601.48.

Q. And the total amount received under that contract? A. $1,757,355.87.

Q. And the gross profit shown by the returns?

A. $201,754.39.

Q. That is $201,000? A. Yes, sir.

Q. You gave testimony about these two contracts entered into in 1941, where the partnership was referred to as consisting of three general partners and ten limited partners, did you not?

A. Yes, sir.

Q. You had done work for the Navy Department before, had you not? A. Oh, yes.

Q. They knew you three general partners pretty well? A. I think so.

Q. Did they make any inquiries of you about the limited partners when you came to sign these contracts?

A. I really don't know where they got this information, but they got it evidently.

Q. But you don't remember any discussion with them about that?

A. I don't remember any discussion with them about that. [471]

Q. Now, Mr. Johnson, you are familiar with the general setup of the first limited partnership, aren't you? A. Yes.

(Testimony of George Johnson.)

Q. And the amount of stated capital which went into that partnership—$105,000, is that correct?

A. Yes.

Q. I show you the partnership return again, Respondent's Exhibit B and call your attention to the first schedule in that return, showing shares in 105th, and then it lists, 15 for Albin, 15 for George and 15 for John. Now, what do those represent according to your understanding?

A. Well, those are thousand dollars, aren't they?

Q. Well, that is what I am asking you. That means $15,000 out of the $105,000 stated limited partnership capital?

A. Yes. I don't know how it came about. We all decided on $20,000, and the first time that I knew of that was in this Courtroom on this, that it was intended then—it was $20,000 for each partner and $20,000 for each group of children.

Q. Belonging to each partner? A. Yes.

Q. How did the change come about?

A. I don't understand it yet how it came about. The first time I knew about it was after we got into this Courtroom.

Q. But you corrected it in the year 1943? [472]

A. Yes. It was a mistake in the bookkeeping of some kind, and how it came about, I really don't know yet.

The Court: Let me make a comment that I think might be important in this case. Mr. Potts, you give attention to this. If the Court should decide

(Testimony of George Johnson.)

that the limited partnership is a valid partnership, it would seem that instead of these general partners being taxed—each one 15/105 for income—it would be 20/120 or 1/6?

Mr. Potts: I think that that is correct. I think that that was the intention as the evidence shows it.

The Court: As I understand it, these individual partners probably did not return 1/6 income. On they contrary they return apparently for the first year 15/100. Is that correct?

Mr. Payne: That is according to my statement. That is what I was going to ask this witness. That is right, Your Honor.

The Court: In any event it should be 1/6 each.

Mr. Potts: I am sure that the testimony is clear in that respect, and that it is the fact that that was the intention of the formation, that the interest of the general partners would be equal to the interest of the limited partners, who were their children.

The Court: Now you may proceed. I just wanted to clear that up. [473]

Mr. Payne: I was wondering, Your Honor, if there was any necessity for the Respondent amending its pleadings to cover that point.

The Court: I think you might well do that.

Mr. Potts: That would just conform to the proof, would it not?

Mr. Payne: Yes.

The Court: I think you might as well do that.

Mr. Payne: Well, we will make a motion at this time for leave to amend.

The Court: Leave will be granted to amend. I

(Testimony of George Johnson.)

suppose since we all know what the situation is, you may file that by, we will say, June 20th.

Mr. Payne: That will be fine. Thank you. I will do that.

Q. (By Mr. Payne): Mr. Johnson, how did you determine among yourselves on this $20,000 for the limited partners coming from each family of the general partners? I call your attention to the fact that some of these children start out in this parnership—for example, Lloyd had a stated interest of $10,000, is that correct?

A. That is right.

Q. And Bernice Wallin had how much?

A. $10,000.

Q. $10,000? A. Yes, sir. [474]

Q. Whereas——

A. (Interposing): John's three children had $6,666.66, each one of them—so the three of them had between them $20,000.

Q. Take Roy, for example, he only got $6,666.66, is that right?

A. Yes. In other words, the $20,000 was divided among the three then.

Q. Here is what I am getting at, though Roy, according to the testimony did render some services, which has been covered by the testimony, and the girls rendered none, yet some of the girls had a larger stated interest than Roy, for example. How do you explain your reason for that?

A. Well, in other words, my daughter, she had $10,000——

(Testimony of George Johnson.)

Q. (Interposing): But rendered no services.

A. And rendered very little services.

Q. Well, she rendered no services in fact, isn't that correct?

A. Well, I would not say that, because when you have—I was in this position; that whenever I came home and wanted a little help, why I could always call on my daughter to write a letter, and even if it was 11 o'clock at night she would do it. And if I took a plan home with me and worked on the plan—I am slow at writing, and although I know that game, when I would work on the plan I would have my daughter sitting on the [475] sidelines, and as I read it off and took the measurements off the plan, she would sit there and copy it down and make up a material list. Contracting is a little bit different, or altogether different from any other business that I know of. You know, we cannot just work eight hours. But if we get a plan to figure, we have got to work night and day, maybe some time, for to get that job in. And it was very handy to have somebody that was willing to give you a lift.

Q. Did she do anything like that for you before 1942?

A. Oh, yes. They have all done that during all the years—since they were able to do it. They have rendered that service all the time.

Q. Let me ask you this—the fact of the matter is then that the three general partners decided among

(Testimony of George Johnson.)

yourselves to take in the children from your respective families in exactly the same amount, is that correct? A. That is right.

Q. And you intended to have them in on exactly the same amounts of your stated interests, too—in other words, you expected to have $20,000 in your own name and $20,000 in the children's names?

A. Yes, sir, that is correct.

Q. And the same with each one of the general partners? A. Yes, sir.

Q. And your understanding is that the distributions [476] for the purpose of your individual income tax returns were made on the basis of this schedule in the partnership return of $15,000 for the year 1942?

A. No. My understanding is that the return was made with the idea that I as George Johnson had—in other words, if you divide this partnership in three first, and then each partner divided his amount in two, we have six parts. So, when the return was made out, it should have been made out that my share was 1/6, wouldn't that be it?

The Court: Yes.

Mr. Payne: We will have to develop that by another witness. That is clear now. I didn't think that there was any question about that, but now that it has arisen, we will have to clarify that.

Q. (By Mr. Payne): I do show you, Mr. Johnson, the 1943 return of the partnership, in evidence as Respondent's Exhibit D, and I will ask you if the so stated shares were changed then to 120.

(Testimony of George Johnson.)

A. That is right.

Q. That means to $120,000, doesn't it?

A. That is right, $120,000.

Q. And then Albin and George and John had a $20,000 stated interest each? A. That is right.

Q. And then the children had different amounts, based [477] upon the re-division among the children? A. That is right.

Q. As shown by the testimony.

A. Yes, sir, which totals $120,000.

Q. Mr. Johnson, you have heard the testimony here about this unsuccessful partnership, in which an agreement was signed in January of 1941, Respondent's Exhibit C—that is signed by the original general partners, and Lloyd, Roy and Winston Johnson, is it not? A. Yes.

Q. And Lloyd is your son, isn't he?

A. That is right.

Q. He was the one that you were trying to get into the partnership at that time, I understand.

A. That is right.

Q. Did you sign this partnership agreement with the anticipation or expectation of getting him in?

A. That is right.

Q. And he didn't come in, but he went with Kuney.

A. Well, I really don't remember. I think that he was in the office for some time, and then eventually he was asked to figure this job with Kuney. And in our mind it was just a sort of a friendship gesture to figure this job with Mr. Kuney, because

(Testimony of George Johnson.)

he had known him for several years. But it developed that it became a real partnership. [478]

Q. And then after you found out that he formed a partnership with Kuney, then you came in and formed this new limited partnership in 1942?

A. After he had worked with Kuney for some time, why we then got an idea that we should really make another—that we should make up this partnership, and this was worked in—oh, it was started to work on in the latter part of 1941, and we really had all expectations of having this completed by the end of 1941. But it just was never really gotten all together, because there were a great many people to talk to, and we also were busy with other things, and we sort of let it slide, and that is why it was brought over into 1942.

Q. You are speaking now about the 1941 partnership agreement, Respondent's Exhibit C?

A. Yes. This here was never worked on.

Q. I understand that.

A. And then finally—and then we were still short of finances to really figure on work that was worthwhile—that was profitable. So we then—after some time—some time after that partnership was formed we then got in with the idea that we should take our children in and let each one of them give us a note, which we could use as an asset in our business, and by this building up a backlog, so to speak, to be able to secure bonds. That was our shortcomings all the time. We just had to confer with the bonding company if they would bond us

(Testimony of George Johnson.)

on [479] this job, or bond us on that job, and you realize, when you have got one job, as long as that is not finished, the bonding company considers that as a liability. So to get a bond for another job you had to really have something to show for it before they would go on your bond.

Q. Now, Mr. Johnson, I want to ask you another question. You executed one of the contracts for that Bremerton job in December, 1940, didn't you?

A. Yes. We went—we got that job together with the West Coast Construction Company, as I have already testified.

Q. And you signed other contracts earlier in the year 1941, I believe, for that job?

A. Yes, in addition to it.

Q. Did they have anything to do with the formation—of the attempted formation of this co-partnership, or Respondent's Exhibit C in 1941?

A. Well, whether that had anything to do with it, I really don't know but——

Q. (Interposing): Weren't you trying to get a system set up here where you could divide this income with your sons?

A. We were so anxious to get backing, to be able to make a few dollars. We didn't really anticipate —we didn't look very much for the tax part of it. We were first trying to get a setup where we could make the money. I do not know if anyone else gave much of a thought of the tax, because so far [480] we had not been able to make much money.

Now, we actually, by making this setup—we are

(Testimony of George Johnson.)

really in a shape where we have paid in not a little money to Uncle Sam, for which I am glad.

Q. Wasn't the scheme determined to try to divide the income among your family in what you thought was an equitable way? A. Not at all.

Q. The sons were not expected to put in any capital in this 1941 partnership, I am referring to Respondent's Exhibit C, were they?

A. In here we feel that we were somewhat indebted to our sons, because our two sons, or three sons, they were willing to put in their efforts with their fathers when we were down and out, you might say. We were not altogether broke, but we were badly bent.

Now, they were willing to put in an effort with us so that it might be possible for us to make a few dollars, and by making a few dollars we have been able to contribute not a little to Uncle Sam in taxes. We never expected that we would be able to do what we have done, but I think that we have done not so bad.

Q. Let me ask you this, Mr. Johnson. You testified about your difficulties in getting bonds. Tell the Court, if you will, what they require—what the bonding company [481] requires of a partnership when they ask for a bond? Do they require a listing of the assets?

A. By all means. You cannot get any bonds unless you produce a fairly good statement.

Q. Now, before the limited partnership was formed, what did you do, list all of your assets of

(Testimony of George Johnson.)

the partnership, including the assets individually owned by the three of you?

A. Oh, by all means. That is always done.

Q. All right.

A. We had to do that even when we were a corporation. Even though we were incorporated, for to get a bond we had to list everything that we had individually, and you will find—you can look up a surety bond anywheres, and you will find that the owner, or whoever is the contractor, not only signs as the president for the corporation if they are a corporation, but you will find that they most likely list their private assets. That is, I am talking about the small fry, like we were at that time.

Q. Now, let me ask you this, after the limited partnership was formed how did you list the assets on your application for bonds?

A. We listed the Western Construction Company, and we listed George Johnson's assets, and J. A. Johnson's and Albin's.

Q. Would they be listed separately, or together?

A. I really don't know. [482]

Q. Coming back to Respondent's Exhibit B in evidence—the 1942 return—when you would apply for a bond in 1942 would you just list the $105,000 represented by the limited partnership capital on that bond?

A. I would not say so. This is—oh, what would I call it? This is really—you might call it capital stock, isn't that correct?

(Testimony of George Johnson.)

Q. This is the measure of the division of the profits isn't it?

A. Yes, this is the measure of the division of the profits, but——

Q. (Interposing): Will you answer if this is the measure of the division of the profits?

A. Yes. Yes, we called it that.

Q. Yes.

A. We would list the profit, or we would list those—the money that the children put in; the money of George Johnson and J. A. Johnson and Albin, what they had in the bank, we would list that, and as we made a dollar and it would show a little profit on the bank account, we would list that. We would list every penny that we had in the partnership, together with the individual assets.

Q. So the notes that the children gave you three general partners were listed as your private assets in such a statement, is that right? [483]

A. That is right.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.)

The Court: I may state that I gave the Commissioner until June 20th in which to file his amended answer. And perhaps I had better fix July 10th as the date within which the Petitioners can file a reply if they think one is needed.

Mr. Potts: Thank you, Your Honor.

The Court: Now, is that all of your testimony, Mr. Potts?

Mr. Potts: Yes, Your Honor. That is the Petitioners' case, Your Honor.

(Whereupon the Petitioners rested their case.)

The Court: You may proceed, Mr. Payne.

Mr. Payne: Yes, Your Honor. Just a moment, please. I will call Mr. Von Harten.

Respondent's Case

Whereupon,

JOHN H. VON HARTEN

called as a witness on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Payne:

Q. What is your name? [484]

A. John H. Von Harten.

Q. And what is your occupation, Mr. Von Harten?

A. I am a Certified Public Accountant.

Q. Have you for many years handled some of the accounting for the Western Construction Company? A. Yes, sir.

Q. And the general partners of that company?

A. Yes, sir.

Q. And the special partners of that company?

A. Yes, sir, but not all.

(Testimony of John H. Von Harten.)

Q. Some special partners had their returns prepared elsewhere, but generally you handled the returns for the Johnson family? A. Yes, sir.

Q. Mr. Von Harten, I show you Respondent's Exhibit B, the 1942 return of the partnership of the Western Construction Company, and I will ask you if you prepared that return.

A. Yes, sir.

Q. I call your attention to the schedule inside of that return showing the stated interests of the general and special partners. Where did you get that information, Mr. Von Harten?

A. Just what information do you refer to?

Q. Showing the interests of the respective partners, Albin Johnson, $15,000, and the other general partners in the same amount of 15 portions of the 105th interest in the [485] partnership.

A. I think that that was in accordance with the partnership agreement.

Q. Now, can you show me what the total profit —the distributable profit to the limited and general partners—is on that return, Mr. Von Harten?

A. $420,408.21.

Q. Can you turn to the return and show how the distribution was shown to the respective partners, in amounts?

A. Well, that is shown in this schedule.

Q. Please state to the Court the amount of the distributions shown on that return to Mr. George Johnson. A. $68,423.89.

(Testimony of John H. Von Harten.)

Mr. Potts: Is that Exhibit B, Counsel, that you are referring to?

Mr. Payne: That is Exhibit B—the partnership return. That is right.

Q. (By Mr. Payne): And I show you, Mr. Von Harten, what purports to be the income tax return of Mr. George Johnson for the year 1942, and I will ask you if you prepared that return?

A. Yes, sir.

Mr. Potts: Is that marked as an exhibit?

Mr. Payne: It is not yet.

Q. (By Mr. Payne): That is George Johnson's return for that year, is it? [486] A. Yes, sir.

Q. And how much profit was reported in that return of George Johnson in the Western Construction Company? A. $68,549.44.

Q. There is a slight discrepancy there between the two figures. Can you reconcile that for the record?

A. There is some profit on the books that is not deductible for income tax purposes but which is on the individual return, such as for charitable purposes, and so on, and that accounts for the difference.

Q. So Mr. George Johnson did report in his individual return his distributive share of the partnership based on a stated 15/105th interest in the Western Construction Company for that year?

A. I think that that is after providing for salaries.

(Testimony of John H. Von Harten.)

Q. After providing for salaries to the three general partners?

A. And in this case Winston A. Johnson.

Mr. Payne: I see. We should like to offer Mr. George Johnson's return in evidence, Your Honor, as the next exhibit number.

Mr. Potts: No objection.

The Court: It will be received as Respondent's Exhibit I. [487]

(Document above referred to was marked Respondent's Exhibit I and received in evidence.)

Mr. Payne: Will Counsel stipulate that the same was true with respect to the return of Huldah Johnson, the wife of George Johnson?

Mr. Potts: Yes, we will so stipulate. I think that that is true, isn't it, Mr. Von Harten?

The Witness: Well, this includes both husband and wife.

Mr. Payne: I didn't hear you, Mr. Von Harten.

The Witness: The $68,000 includes both husband and wife.

Mr. Payne: I beg your pardon. That is the total community distribution?

The Witness: Yes, sir.

Mr. Payne: That is right. And the prior amount was included in George's return, and then the community division was made afterwards?

The Witness: Yes, sir.

(Testimony of John H. Von Harten.)

Mr. Payne: I just want to have it clear that Huldah's return would show 50 per cent.

The Court: One-half of the income reported as the earnings of the partnership?

Mr. Payne: Yes. [488]

Mr. Potts: We will so stipulate if that is the fact. Mr. Von Harten, will you tell me if it is not?

The Witness: Yes, I think that that is true.

Mr. Payne: I offer for identification the income tax return of J. A. Johnson for 1942.

The Court: It will be marked for identification as Respondent's Exhibit J.

(The document above referred to marked Respondent's Exhibit J for identification.)

Mr. Potts: We will have no objection to this being received in evidence.

The Court: All right.

Mr. Payne: I just want to develop that in each one of these three general partners' cases, that their distributive share of the partnership was based on a stated 15/105th interest after the deduction of salary shown on the 1942 partnership return. Is that correct, Mr. Von Harten?

The Witness: Yes, sir.

Mr. Payne: We offer Mr. John Johnson's return in evidence, and it is understood that one-half of the community profit stated therein was the profit of Mr. J. A. Johnson's wife, one of the Petitioners here.

Mr. Potts: It is so stipulated.

(Testimony of John H. Von Harten.)

The Court: It may be received in evidence. [489]

(The document above referred to, previously marked Respondent's Exhibit J for identification, received in evidence.)

Mr. Payne: I offer in evidence the income tax return of Albin Johnson for the year 1942, for the same purpose.

Mr. Potts: No objection.

The Court: It will be received in evidence as Respondent's Exhibit K.

(The document above referred to, marked Respondent's Exhibit K for identification, received in evidence.)

Q. (By Mr. Payne): Mr. Von Harten I show you Respondent's Exhibit K and I will ask you if distribution was made to Albin on the same basis?

A. Yes, sir.

Mr. Payne: And, if Your Honor please, Mrs. Albin Johnson's return is not before the Court, but we have stipulated the percentage of the distribution which constitutes his taxable income and the percentage which belongs to his wife.

The Court: Very well.

Mr. Payne: If Your Honor please, in addition to the original returns of the three general partners, amended returns were subsequently filed to take care of small amount of capital gain. I think, to complete the record in every case, [490] we should offer the amended returns for that purpose, and I

(Testimony of John H. Von Harten.)

now offer the amended return of George Johnson for the year 1942.

Mr. Potts: No objection.

The Court: It will be received in evidence as Respondent's Exhibit L.

(Document above referred to, marked Respondent's Exhibit L for identification and received in evidence.)

Mr. Payne: And the amended return of J. A. Johnson for 1942.

The Court: It will be received in evidence as Respondent's Exhibit M.

(The document above referred to, marked Respondent's Exhibit M for identification, and received in evidence.)

Mr. Payne: And the amended return of Albin Johnson for the year 1942.

The Court: It will be received in evidence as Respondent's Exhibit N.

(The document above referred to, marked Respondent's Exhibit N for identification, received in evidence.)

Q. (By Mr. Payne): Mr. Von Harten, I show the partnership return for the [491] year 1943, Respondent's Exhibit D, and ask you if the distribution of profit to the three general partners was on a different basis from that shown in the 1942 return? A. Yes, sir.

(Testimony of John H. Von Harten.)

Q. Based on what? Will you read that for the record?

A. The share was one-sixth. The salary was $7,500 each.

Q. That is for what—a six months' period?

A. Yes.

Q. To what date?

A. Six months ending December 31, 1943.

Q. You say a one-sixth interest, or, in other words, 20/120ths of the partnership interest?.

A. Yes.

Q. For each of the general partners?

A. Yes, sir.

Q. And the salaries stated in that return are just for a six months' period, you understand?

A. That is right, yes, sir.

Q. Mr. Von Harten, do you know whether a return was prepared for this partnership for the period of January 1 to June 30, 1943?

A. Yes, sir. It was.

Mr. Payne: I would like to explain to the Court that we do not have a copy of that return, and we haven't been able to get it, and our evidence is somewhat incomplete in [492] that respect, and I thought that we should explain it to the Court. We do not have in our possession the partnership return for that first six months' period.

The Court: Does the taxpayer have it? If he does, why a copy may be received.

Mr. Payne: I do not think that we are in any material difference about it, because the income is not in controversy. It is just a division.

(Testimony of John H. Von Harten.)

The Court: I imagine that the first six months of 1943 are divided on a basis of the capital interest of $50,000 each to the general partners.

Mr. Payne: I am sure that we can find that out.

Q. (By Mr. Payne): Do you happen to know, Mr. Von Harten, about that?

A. Well, when the agent's auditor went into this matter he said that no return for the first six months had been received, and I typed a copy for him. Now, where it went, I don't know.

Q. Can you tell the Court whether the division was made on the same basis as the division shown on Exhibit D?

A. No, I cannot without going into it.

Q. Can you tell from the partnership books?

A. Not without a lot of computations.

Mr. Potts: You are speaking of 1942 and 1943—those are the two years. One year was forgiven, but you are [493] speaking of the partnership returns, are you?

Mr. Payne: I am speaking of the partnership returns for the first six months of 1943, Mr. Potts. That is while the first limited partnership was still in operation.

Mr. Potts: And it was not corrected until the new limited partnership agreement was signed.

Mr. Payne: I was mistaken in the question that I asked Mr. Von Harten. I assumed that the distribution was made on the basis of the 1942 returns.

Mr. Potts: Well, I would assume so too. Just a minute.

(Testimony of John H. Von Harten.)

Mr. Payne: We will call Mrs. Potts to find out the answer to that, Your Honor.

The Court: Maybe you will be able to find that return some place.

Mr. Payne: I had temporarily overlooked it, Your Honor, that we didn't have it. I had it in mind some time ago and intended to find it.

Mr. Potts: I think we are willing to stipulate that it was made——

Mr. Payne (Interposing): That the distribution to the individuals was made——

Mr. Potts (Continuing): ——was made on the basis as the 1942 return.

Mr. Payne: On the same basis as the 1942 return? [494]

Mr. Potts: Yes, after the filing of the first certificate of formation of the limited partnership.

Mr. Payne: In other words, the purported limited partnership agreement was filed the same?

Mr. Potts: Yes.

Mr. Payne: Up until the execution of the second limited partnership?

Mr. Potts: Yes. I think that was Mrs. Potts' testimony yesterday, that the books were corrected. His Honor asked that question if you will remember.

The Court: I believe so and this mistake in the capital interest of the general partners was not corrected until the new partnership agreement was signed.

Mr. Potts: That is the evidence.

(Testimony of John H. Von Harten.)

Mr. Payne: If your Honor please, I am sometimes a little bit at a loss to know whether we should put all of the returns in evidence. Ordinarily it is a good practice, and particularly in this case, where there is a possible necessity of recomputation of tax based on the larger allocation of profits to the general partners for the period in which the first limited partnership was in operation, which covered substantially all of 1942 and six months of 1943—I think it is necessary that he put in the 1943 returns at least.

The Court: You may do that if you care to.

Mr. Potts: I have no objection. [495]

Mr. Payne: If your Honor please, I believe that we should put in the returns of all the years before the Court in evidence.

The Court: You may do so.

Mr. Potts: I have no objection.

The Court: It sometimes is helpful.

Mr. Payne: How is that?

The Court: It sometimes is helpful. Sometimes some questions arises——

Mr. Payne (Interposing): I will put in the 1943 return of Mr. George Johnson.

The Court: That will be received in evidence as Respondent's Exhibit O.

(Document above referred to marked Respondent's Exhibit O and received in evidence.)

Mr. Payne: And I will offer in evidence the 1941 return of Mr. George Johnson.

(Testimony of John H. Von Harten.)

The Court: Which will be received in evidence as Respondent's Exhibit P.

(Document above referred to, marked Respondent's Exhibit P, received in evidence.)

Mr. Payne: And the 1945 return of Mr. George Johnson.

The Court: It will be received as Respondent's Exhibit Q. [496]

(Document above referred to marked Respondent's Exhibit Q received in evidence.)

Mr. Payne: With the understanding that the community profits stated therein, divisible between him and his wife Huldah, are also before the Court. Is that all right, Mr. Potts?

Mr. Potts: Yes.

The Court: Very well. That is understood and stipulated.

Mr. Payne: We offer, if your Honor please, the 1943 return of Mr. J. A. Johnson.

The Court: That will be received as Respondent's Exhibit R.

(Document above referred to marked Respondent's Exhibit R, received in evidence.)

Mr. Payne: We have detached from that the consent of the extension of the period, because there is no question before the Court about that.

The Court: Very well.

Mr. Payne: It would just encumber the record. And we offer the 1944 return of Mr. J. A. Johnson.

(Testimony of John H. Von Harten.)

The Court: Received as Respondent's Exhibit S.

(Document above referred to marked Respondent's Exhibit S, received in evidence.)

Mr. Payne: And we offer the 1945 return of Mr. J. A. Johnson. [497]

The Court: Received as Respondent's Exhibit T.

(Document above referred to marked Respondent's Exhibit T, received in evidence.)

Mr. Payne: With the understanding that similar returns were filed by his wife, Ellen Johnson, also before the Court, showing her community interest.

The Court: Is that stipulated, Mr. Potts?

Mr. Potts: Yes, your Honor.

Mr. Payne: We offer Mr. Albin Johnson's return for 1943.

The Court: That is received as Respondent's Exhibit U.

(Document above referred to, marked Respondent's Exhibit U, received in evidence.)

Mr. Payne: And Mr. Albin Johnson's return for the year 1944.

The Court: That is received as Respondent's Exhibit V.

(Document above referred to, marked Respondent's Exhibit V, received in evidence.)

Mr. Payne: And Mr. Albin Johnson's return for the year 1945.

(Testimony of John H. Von Harten.)

The Court: It will be received as Respondent's Exhibit W.

(Document above referred to marked Respondent's Exhibit W, received in [498] evidence.)

Mr. Payne: And, as stated before, the community and separate division between them has already been stipulated by the parties.

The Court: Very well.

Q. (By Mr. Payne): Mr. Von Harten, were you familiar with the details leading up to the formation of the limited partnership in 1942?

A. No, I didn't have very much to do with that. I think Mr. Potts and——

Q. (Interposing): Do you know who prepared that agreement?

A. I am not sure, but I always took it for granted that Mr. Potts did.

Q. Did you, in your accounting of the income tax affairs of the Johnson family, have any discussion with them about this division with their children for the purpose of reducing their Federal taxes?

A. I do not recall any specific conversation along that line.

Q. Or with Mr. Potts?

A. Well, I cannot say. I do not remember whether I talked to him about that particular thing or not.

Q. You were not instrumental then in helping to set up this limited partnership?

(Testimony of John H. Von Harten.)

A. I do not recall doing anything, I would say, along that line. I knew that it was done, and I took some interest [499] in it. I audited the books, and I took some interest to see what the terms were so that the income would be recorded correctly.

Q. Did you prepare for Mr. Potts, or for the general partners, tax computations showing about what their taxes would be on certain stated incomes if included in the returns of the three general partners, and what it would be if it were divided with members of their families?

A. Mr. Payne, I do not remember of having done so.

Q. You do not remember of ever having done that? A. No, sir.

Mr. Payne: That is all.

Cross-Examination

By Mr. Potts:

Q. That matter, Mr. Von Harten, was never called to your attention, was it?

A. Well, I do not remember all of the conversations that I have had. That is a long time ago. I cannot say if it was, nor would I want to say if it was not.

Q. May I ask you this, the first time that you learned about the formation of the limited partnership was when I showed you the articles after they had been recorded and published in the local paper, is that right?

(Testimony of John H. Von Harten.)

A. According to my memory I think that is correct.

Mr. Potts: That is all, thank you. [500]

Mr. Payne: That is all.

(Witness excused.)

Mr. Payne: I would like to call Mr. Alvin Johnson for a moment please, if your Honor please.

The Court: Very well.

Whereupon,

ALBIN JOHNSON

a witness previously called on behalf of the Petitioners, recalled as a witness on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Payne:

Q. Mr. Johnson, is Elsie your daughter?

A. That is right.

Q. And she was married to a man by the name of Keil? A. Yes, sir.

Q. And Elsie Keil was one of the limited partners in the 1942 partnership? A. Yes.

Q. And that continued during the 1943 partnership also?

A. That is right, and it still continues.

Q. Did you know that Elsie and her husband filed returns and showed the partnership profit as equally belonging to each?

(Testimony of Albin Johnson.)

A. I am not so sure how that was done. [501]

Q. You don't know? A. No.

Q. When did Elsie and her husband have marital difficulties between them, do you remember?

A. No, I don't. I don't remember when that was.

Q. Was Elsie divorced from Rudolph Keil?

A. Yes.

Q. Do you know what year that was?

A. I don't really remember that. About 1944 I guess, wasn't it?

Q. Do you remember the matter coming up about the division of their property and property interests in connection with their divorce?

A. Yes, there was something about that, I remember.

Q. Do you remember the question came up about the treatment of the partnership interest?

A. He signed over his interest in the partnership interest to Elsie.

Q. Did you take the position that that interest belonged to Elsie?

A. No, I did not. I didn't take any position at all at that time.

Q. You did not?

A. No. I never saw Rudolph. I never discussed it with him at all. [502]

Q. Do you know who prevailed upon him to relinquish his claimed interest in that partnership to Elsie?

A. I don't know that anybody prevailed upon him at all.

(Testimony of Albin Johnson.)

Q. But you do know that it was done?

A. I know that it was done.

Q. Do you know who Elsie's attorney was at that time? A. Yes. Mr. Potts.

Q. Mr. Potts? A. Yes, sir.

Mr. Payne: That is all.

Cross-Examination

By Mr. Potts:

Q. Just a minute, Mr. Johnson. First let me have this marked. Will you please mark this, Madam Clerk?

The Court: That will be Petitioners' Exhibit 29 for identification.

(Document above referred to marked Petitioners' Exhibit 29 for identification.)

Q. (By Mr. Potts): Mr. Johnson, showing you Petitioners' Exhibit 29 marked for identification—I am sorry—I thought that those were the original signatures. I am sorry, Your Honor. I thought that I had the original signatures on a property settlement agreement, but I have not. I would like to offer it, but I do not know how I can identify it. [503]

The Court: Well, I should think it is rather immaterial anyhow, it seems to me—a property settlement between them. I do not see how it would throw any light on this proceeding.

Mr. Potts: Then I will withdraw Petitioners' Exhibit 29 for identification.

The Court: Yes. It may be withdrawn.

(Document above referred to, previously marked Petitioners' Exhibit 29 for identification withdrawn.)

Mr. Potts: That is all.

Mr. Payne: I have no further questions.

(Witness excused.)

Mr. Payne: We would like to call Mrs. Potts for a few questions.

Whereupon,

MRS. LUCILLE EASTERBROOK POTTS

recalled as a witness on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Payne:

Q. Mrs. Potts, you were testifying from the books and records of the Western Construction Company yesterday, and there seems to have been just a little misunderstanding about the stated partnership capital for the first partnership [504] and how it was worked out, and the change which was made in the second limited partnership which was formed in 1943. Will you turn to the books and tell the Court the amount of each general partner's stated capital contribution to the first limited partnership February 24, 1942?

A. $15,000.

(Testimony of Mrs. Lucille Easterbrook Potts.)

Q. For each of the three?

A. That is right.

Q. And then the family of each—the children of each of the general partners had an aggregate of $20,000, I believe, in the first partnership?

A. That is right.

Q. And that continued until the partnership formed June 30, 1943? A. That is right.

Q. Then what change was made in the stated capital investment of the three general partners?

A. It was increased to $20,000.

Q. There was an an increase to $20,000 each?

A. That is right.

Q. Where did that additional $5,000 for each come from, Mrs. Potts?

A. They put it in with their own money.

Q. You had another account on the books, didn't you, of the personal accounts of the individual general partners? [505] A. Yes, sir.

Q. Did you just make a bookkeeping entry of taking that out of the personal account of the partnership and putting it into the stated capital account of the limited partnership?

A. I don't remember whether it was a bookkeeping entry, or how.

Q. Will your books show—turn to the personal accounts of the three general partners at or after June 30, 1943.

A. I think it was just an entry.

Q. What do the books show with respect to that? Will you please read it to the Court in each

(Testimony of Mrs. Lucille Easterbrook Potts.)

case? A. "June 30, 1943, to capital, $5,000."

Q. That is for each of the three?

A. Yes, sir.

Q. You are reading now from Albin Johnson's account? A. Yes. They are all the same.

Q. Now, will you reach each of the others, Mrs. Potts?

A. "June 30, 1943, George Johnson, to capital, $5,000."

Q. And that is from what—from his personal account? A. Yes, sir.

Q. And the one that you just read for Albin was from his personal account? A. Yes, sir.

Q. Now, the next one, John A. Johnson.

A. "June 30, 1943, to capital, $5,000," for J. A. Johnson. [506]

Q. Now, Mrs. Potts, I was a little bit foggy last evening, I will admit, on the matters that you testified to from the audit report. You read into the record yesterday afternoon the total capital of the three general partners before the formation of the first limited partnership, did you not?

A. Yes.

Q. And then when Mr. Potts called you back on the stand you testified from an audit report——

A. (Interposing): No, I testified from the books, but I corrected it. I had made a mistake on the other figures, Mr. Payne.

Q. Now, since I am confused about it, it may be that the record is confused, and I will ask you, with

(Testimony of Mrs. Lucille Easterbrook Potts.)

the Court's permission, if you will please repeat that for me.

A. I will have to figure it all out again now.

Q. Well, we will have quite a little time left this morning. I would like to get that one statement straightened out. A. All right.

Q. And since we have some time left, will you do that? What was the total capital of each general partner before the formation of the first limited partnership?

A. I will have to give it to you as of January 1, 1942.

Q. All right [507]

A. Albin Johnson $44,465.16.

Q. Before you leave that, please, was there any other statement or entry bringing that down to date February 24, 1942, when the first limited partnership was formed?

A. What do you mean—a statement—what do you mean, Mr. Payne?

Q. A statement of a change in his capital account.

A. Well, his account changed every day. The Johnsons did not have any checking account, and they drew money every day or so. I mean, the account would change every day, if they drew a check.

Q. And you charged those checks to their personal accounts, did you?

A. They didn't have any personal checking account ever.

(Testimony of Mrs. Lucille Easterbrook Potts.)

Q. They used the company's checking account for their personal use then?

A. Not for their personal use, but they drew against it at the time.

Q. So that is the last entry you have on the books showing capital of Albin Johnson before the formation of the new limited partnership?

A. Yes.

Q. Now, will you state for the record what change took place at the formation of the partnership and what his account showed after that [508] date?

A. Well, we put $15,000 into his capital account and $29,465.16 into his personal account.

Q. All right. Now, take up the next general partner in the same way, will you please?

Mr. Potts: Before you turn to that, may I have those figures again?

The Witness: We put $15,000 into his capital account and $29,465.16 into his personal account.

Q. (By Mr. Payne): You have now Mr. George Johnson's account, have you?

A. Yes. Well, I had it all figured out yesterday, but I have to check and subtract figures here now to figure it again, because there is interest and various other things.

Mr. Potts: I will give you a piece of paper and see if that will help you. (Handing paper to witness.)

A. Well, on the books here it shows—the first figure I read yesterday——

(Testimony of Mrs. Lucille Easterbrook Potts.)

Q. (By Mr. Payne, interposing): Please give that for the record again and we will start from there.

A. Well, there was an error. You don't want it back in the record again wrong, do you?

Q. Well, let us get it corrected. That is what we want, to get the corrected amount.

A. All right. Well, he had $75,870.04 in his [509] personal account, and $15,000 in his capital account. But this $75,000 included some figures that were deducted out.

Q. Will you explain those to the Court?

A. Well, there was some real estate that we always deducted out, and then we finally took it off the books.

Q. Will you show the amount of that?

A. Should I get the journal entry and look it up?

Q. Was that in your previous testimony of yesterday—the amount of that?

A. Not the amount; the corrected amount was.

Q. The amount taken out was not shown?

A. No.

Q. How long would it take you to get it for the Court?

A. Well, ten minutes or fifteen minutes. I can do it right here. I will look up the journal entry and show you. I mean, I have not looked at these books so much lately. It will take me a minute or two.

Q. Those, I remember, you testified were assets which had been on the books for many years?

(Testimony of Mrs. Lucille Easterbrook Potts.)

A. That is right.

Q. In the names of George Johnson and J. A. Johnson?

A. In the names of George Johnson and J. A. Johnson, yes, sir.

Q. And how long after were they taken out—how long after the formation of this new partnership? [510]

A. Well, they never were—I mean, they might have been on the books, but when the statements were made up, or anything, they were always treated separately. I mean, they might have had a sheet in here.

Mr. Payne: Your Honor, could we reserve that, and maybe if we had a short recess, in a few moments we could get the witness to check those amounts and we could come back to them.

The Court: Very well.

Q. (By Mr. Payne): Now, Mrs. Potts, you understand from the testimony that the capital account of the first limited partnership was regarded as $105,000, is that right? A. That is right.

Q. And that was used for the basis of making distribution of profits, is that right?

A. That is the way I understand it. I had never distributed it.

Q. I understand. Now, those accounts—well, take at the end of 1942, there was a substantial amount of profit credited to the account of each partner, was there not? A. Yes, there was.

Q. And the testimony has gone in on that. The

(Testimony of Mrs. Lucille Easterbrook Potts.)

capital stock, for purposes of division of profits for the next period, was not changed by reason of the fact that the profits [511] were left in the business, were they? A. No.

Q. No matter whether a partner left his profits in or drew them out, his basis for distribution of profit was always computed on the original stated investment, isn't that right?

A. Yes. That is the way we always did.

Q. And, take for example, later on, after the 1943 partnership was formed and the stated interests were changed, then the testimony showed that some later years certain of the partners drew out very large amounts of cash. That is your recollection, isn't it? A. Yes, I think it is.

Q. And others drew out very little except what was necessary for tax payments?

A. I do not know what they used it for. Some drew out much less than others.

Q. Take, for example, when Roy drew out some $40,000—you recall that, do you?

A. Yes. I do.

Q. And no change was made in his stated interest for distribution of profits, was there?

A. No, sir.

Q. It always remained on the basis of his original contribution? A. Yes. [512]

Q. Either the 1942 or 1943 partnership?

A. That is right.

Q. And the general partners left some of their profits in the business, too, I understand?

(Testimony of Mrs. Lucille Easterbrook Potts.)

A. Yes, they did.

Q. And their percentage of distribution of profits was not changed by reason of the fact that they left their earnings in the business? A. No.

Q. Mrs. Potts, you were going to get for us this morning the amounts of borrowed money in 1942, particularly, and in 1943. Do you have those, Mrs. Potts?

A. When the limited partnership was started in 1942 they owed the bank $80,000, which had been owing for some considerable time. And then on July 30, 1942, there was $50,000 borrowed from the bank. Those are the only borrowings—the only money that was borrowed.

Q. At any time during the years we have before the Court? A. That is right.

Q. I see. And the $50,000 was borrowed from the bank when, you say?

A. On July 20, 1942.

Q. Can you tell, or do you know whether the notes which have been the subject of testimony here were used as the basis [513] for getting that loan—if you know? I am just asking you if you know.

A. I really don't know. That was way back in 1942.

Q. I see. Mrs. Potts, you have heard the testimony about the profits here in 1942 and the contracts which were in process of construction. You understand that the profits are reported on the basis of completion of the contract, don't you?

A. Yes, and they always have been.

Q. So if you begin a contract in one year which

(Testimony of Mrs. Lucille Easterbrook Potts.)

is only partially completed, and you do not complete it until the subsequent year, the profit is reflected as to that contract in the return of the year in which it is completed? A. That is right.

Q. And that was true with respect to 1942 on the Quartermaster contract and the Rainier Vista contract? A. That is right.

Mr. Payne: If Your Honor please, I believe that that completes the Respondent's case with the exception of the figures that Mrs. Potts is going to get for us. If we have a brief recess, I think that we can conclude our case then.

The Court: We will recess until fifteen minutes after 11 so as to give her time. If she gets it sooner than that, we will reconvene sooner.

Mr. Payne: Very well.

(Thereupon a recess of 15 minutes was taken.) [514]

The Court: You may proceed, Mr. Payne.

Mr. Payne: Mrs. Potts, will you please resume the stand?

Whereupon,

MRS. LUCILLE EASTERBROOK POTTS resumed the stand for further examination.

Direct Examination
(Continued)

By Mr. Payne:

Q. Mrs. Potts, do you now have the information which we were discussing before recess?

A. I have.

Q. Will you state then for the record the capital account of each general partner before and after the formation of the first limited partnership?

A. Before and after?

Q. Yes. A. Oh, I see.

Q. Take up each partner separately.

A. J. A. Johnson, before the formation of the first limited partnership, had $29,140.55.

Q. That was in the acknowledged partnership account? A. That is right.

Q. All right. Now, what was the amount—do the books show any change in that amount upon the formation of the new partnership? [515]

A. Then he had $15,000 in his capital account—he put $15,000 into his capital account.

Q. Out of $29,000? A. Yes, sir.

Q. What about the rest. Did he have a personal account then of the balance of that—the difference between the $15,000 and the $29,000?

A. Well, at the time that the partnership was formed this transfer of real estate I am talking about had not been——

(Testimony of Mrs. Lucille Easterbrook Potts.)

Q. (Interposing): This $29,000 does not include the real estate, does it?

A. Not his own personal real estate, no.

Q. I think it would be clearer for the record if you would state the total amount, and how much real estate was taken out, and what was done with that.

A. $97,535.58 on our books, which included maybe real estate that had belonged to George Johnson and J. A. Johnson since—oh, I think some of it had belonged to them since 1925, or way back when. And it had been put on the partnership books, but always considered as their separate property. And in setting up the accounts correctly we took that real estate and stuff that belonged to the two of them off the books.

Q. And where did you put it?

A. In a little set of books that we called "J. A. Johnson and George Johnson, Partners." [516]

Q. Didn't you keep it in the same set of books under personal account?

A. In these books? (Indicating)

Q. Yes.

A. No. They had another separate little account.

Q. I thought you showed the transfer of that from this partnership account to a personal account in the same records here?

A. No, no. It was taken out of their personal accounts. It was taken out of their personal accounts, and then they started a little partnership—not a little partnership but a little, separate set of

(Testimony of Mrs. Lucille Easterbrook Potts.)

books called "J. A. Johnson and George Johnson," which did not have much money.

Q. You did not state the amounts that were transferred.

A. J. A. Johnson, $68,395.03; and George Johnson, $51,717.13, and that is the amount of real estate that was transferred. (Indicating.)

Q. Your testimony yesterday was that they continued to use those assets for their personal loans, the same as they had previously done.

A. The same as they did on their residence and anything that they had. You know, they always had given their residences or anything that they had personally as security at the bank and to the bonding company.

Mr. Payne: That is all. [517]

Cross-Examination

By Mr. Potts:

Q. This real estate belonged to J. A. Johnson and George Johnson before Albin Johnson came into the partnership then in 1934?

A. Oh, yes. Some of it I think they bought in 1920 and 1925, or some such time as that.

Q. Do you know how the value of this real estate was established for your records?

A. Well, the main part of the real estate is the lot up at 9th and Virginia—I think it is two lots—and I think that they got that lot—they had an apartment building and they traded the apartment building for the lot, as I understand it, and the lot

(Testimony of Mrs. Lucille Easterbrook Potts.)

was—and the two lots were put on the books at that time, I think in 1927 or 1928, at $80,000, because the city was growing that way. And then the city took a turn down here some place.

Q. Well, I mean was the value continued as the price here as originally placed, or was it re-appraised from time to time?

A. No. Just $80,000.

Q. Just the purchase price? A. Yes, sir.

Q. So that after the 1929 crash, and so forth, there was no change made in the value of the real estate? [518]

A. No. Besides the real estate there are a couple of other pieces of real estate—other real estate—but that is the largest item.

Mr. Potts: I think that is all.

Mr. Payne: No further questions.

(Witness excused.)

Mr. Potts: If the Court please, Counsel for the Commissioner have been kind enough to call to my attention the fact that in the petition of Lloyd Johnson we have only asked that the Court find that these expenses were reasonable.

Now, Counsel, as I say, has been courteous enough to point out that this issue being before the Court, and Lloyd Johnson being the only one of the limited partners being brought before the Court, and that only on this question of his expenses, that they are afraid that if the holding of the Court should be against the Petitioners, the claim filed by Mr. Johnson would be foreclosed for a refund, and so they

have suggested, in order to protect Lloyd Johnson and Roberta Johnson, that I at this time move the Court for an amendment to amend Lloyd Johnson's petition so that in the event that there should be a holding by the Court unfavorable to the Petitioners—and I mean the other petitioners, the partners—the limited partners—that we then would be in a position through the amendment to protect Mr. Lloyd Johnson's interest.

The Court: I think it might be well for you to amend, [519] setting up that the Commissioner is contending in these consolidated proceedings that the limited partnership is not to be recognized for tax purposes, and you might set it up affirmatively that the Petitioners Lloyd Johnson and Roberta Johnson, his wife, have returned on a community property basis their proportionate part of this income, and that if the Court in its final decision should hold that the limited partnership is not valid, then that they have erroneously returned that, and ask for an over-payment, entrustance.

Mr. Potts: Yes.

Mr. Payne: We have no objection to that, your Honor.

The Court: I think it might be well for you to amend in view of the issues that we have in this case and you will have up until June 20th to file that, and file your amended petitions in both of those docket numbers, the docket numbers of Lloyd Johnson and Roberta Johnson.

Mr. Payne: And we will have a short period of time in which to answer, I presume?

The Court: Yes.

Mr. Payne: Does the Court wish to fix that at this time?

The Court: Until July 5 if you care to file an answer.

Mr. Payne: Thank you. In that connection, your Honor, I think for the protective purposes of the taxpayer [520] Lloyd Johnson and his wife, Roberta, we should put in evidence the returns showing the amount of income from the partnership which were included in the community for 1942, 1943, 1944 and 1945.

The Court: Are you just going to offer one return and then stipulate as to the others, or are you going to offer them all?

Mr. Potts: I think——

Mr. Payne (Interposing): We should offer, I think, the returns for each year for the husband, with the understanding that the wife's return showed the community half of the amount included by the husband.

The Court: Very well.

Mr. Payne: So we offer the 1942 return of Lloyd Johnson in evidence.

The Court: It will be received as Respondent's Exhibit X.

(Document above referred to marked Respondent's Exhibit X and received in evidence.)

Mr. Payne: And the 1943 return of Lloyd Johnson as the next exhibit.

The Court: It will be received as Respondent's Exhibit Y.

(Document above referred to marked Respondent's Exhibit Y and received in evidence.) [521]

Mr. Payne: The correct name on that one, Mr. Reporter, is Lloyd W. Johnson.

And the 1944 original return of Lloyd Johnson.

The Court: It will be received as Respondent's Exhibit Z.

(The document above referred to marked Respondent's Exhibit Z and received in evidence.)

Mr. Payne: And the amended return of Lloyd Johnson for 1944.

The Court: It will be received as Respondent's Exhibit AA.

(The document above referred to, marked Respondent's Exhibit AA and received in evidence.)

Mr. Payne: And the 1945 income tax return of Lloyd W. Johnson.

The Court: It will be received as Respondent's Exhibit BB.

(The document above referred to marked Respondent's Exhibit BB and received in evidence.)

Mr. Potts: If the Court please, could we hold the record open for this purpose, that claims have been made for a refund, in the event that the Court should hold adversely, [522] but that I do not seem to have copies of here, and I should like to have

the opportunity of filing and introducing in evidence copies of those claims.

The Court: Of Lloyd Johnson and Roberta Johnson?

Mr. Potts: Yes.

The Court: They are the only two that we have before us?

Mr. Potts: Yes.

The Court: That would be affected?

Mr. Potts: Yes.

Mr. Payne: No objection. I think that they should be put in for their own protection.

The Court: Yes.

Mr. Payne: And we will agree to hold the record open until copies can be put in.

The Court: You can send them in and they will be received, and they will be marked at that time as exhibits.

Mr. Payne: We can probably put those in with a brief statement between the parties just to identify them.

The Court: That is all right. Just file them at any time.

Mr. Payne: That concludes the Respondent's case, your Honor. We now rest.

(Respondent rested its case.)

The Court: Do you have anything else, Mr. Potts? [523]

Mr. Potts: We have no rebuttal.

* * *

Filed T.C.U.S. July 12, 1948. [524]

The Tax Court of the United States

Docket Nos. 15495, 15496, 15497, 15498, 15499, 15500, 15586, 15588

WESTERN CONSTRUCTION COMPANY, ET AL.,[1]

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated March 22, 1950.

FINDINGS OF FACT AND OPINION

Petitioner Western Construction Company was created as a limited partnership under the laws of the State of Washington in 1942 and again in 1943. The certificate of formation of the partnership included petitioners J. A., George and Albin Johnson as the general partners and their several adult sons and daughters as the limited partners. Held, on the evidence, petitioner Western Construction Company does not resemble an association in corporate form and is, therefore, not taxable as such. Glensder Textile Co., 46 B.T.A. 176, followed. Held, further, the Western Construction Company is a bona fide partnership composed of the three Johnson brothers

[1]Proceedings of the following petitioners are consolidated herewith: Albin Johnson, Ellen M. Johnson, Huldah Johnson, George J. Johnson, J. A. Johnson, Roberta M. Johnson and Lloyd W. Johnson.

and their several children as set out in the certificate of formation of the partnership and is recognized as such for tax purposes. John A. Morris, 13 T.C. . ., promulgated December 21, 1949, followed.

Ralph B. Potts, Esq., for the petitioners.

Wilford H. Payne, Esq., for the respondent.

In these consolidated proceedings, the Commissioner determined deficiencies in Federal Taxes of petitioners for the years and in the amounts as follows:

Petitioner	Docket No.	Year	Kind of Tax	Deficiency
Western Const. Co.	15495	1942	Income	$ 4,085.00
			Declared Value Excess Profits	49,390.07
			Excess Profits	255,736.68
		1943	Income	4,703.95
			Declared Value Excess Profits	43,432.61
			Excess Profits	233,777.92
		1944	Income	3,152.71
			Declared Value Excess Profits	6,677.60
			Excess Profits	27,574.04
		1945	Income	4,401.33
			Declared Value Excess Profits	18,253.17
			Excess Profits	87,647.08
Albin Johnson	15496	1943	Income	93,780.81
		1944	Income	6,717.05
		1945	Income	23,177.99
Ellen M. Johnson	15497	1943	Income	29,624.73
		1944	Income	2,312.86
		1945	Income	6,529.81
Huldah M. Johnson	15498	1943	Income	30,745.52
		1944	Income	2,385.74
		1945	Income	6,681.15
George J. Johnson	15499	1943	Income	29,872.23
		1944	Income	2,320.75
		1945	Income	6,635.52

Petitioner	Docket No.	Year	Kind of Tax	Deficiency
J. A. Johnson	15500	1943	Income	$29,111.03
		1944	Income	2,262.40
		1945	Income	6,529.81
Roberta M. Johnson	15586	1943	Income	1,285.07
		1944	Income	604.05
		1945	Income	333.50
Lloyd W. Johnson	15588	1943	Income	1,284.76
		1944	Income	604.05
		1945	Income	333.50

The deficiencies result from several adjustments to petitioners' net incomes as disclosed by their returns for the years in question. By appropriate assignments of error petitioners contest these adjustments. The parties agreed by stipulation to an adjustment of most of the issues involved, and effect will be given these stipulations in the recomputation under Rule 50. The stipulations leave for our consideration only two issues:

The first issue is whether petitioner Western Construction Company is taxable as a corporation. This was explained in a statement attached to the deficiency notice of petitioner Western Construction Company as follows:

> It is held that for income tax, declared value excess profits tax and excess profits tax purposes the Western Construction Company under the so-called limited partnership agreements of February 24, 1942, and June 30, 1943, constitutes an association taxable as a corporation as prescribed by Section 3797(a)(3) of the Internal Revenue Code and Section 29.3797-5 of Regulations 111.

Section 3797(a)(3), I.R.C. and section 29.3797-5 of Regulations 111 are printed in the margin.[2 and 3]

[2]Sec. 3797. Definitions. (As amended by sections 120(f), 511, Revenue Act of 1942.)

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person.—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, company, or corporation.

(2) Partnership and Partner.—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation.—The term "corporation" includes associations, joint-stock companies, and insurance companies.

[3]Sec. 29.3797-5. Limited Partnerships.—A limited partnership is classified for the purpose of the Internal Revenue Code as an ordinary partnership, or, on the other hand, as an association taxable as a corporation, depending upon its character in certain material respects. If the organization is not interrupted by the death of a general partner or by a change in the ownership of his participating interest, and if the management of its affairs is centralized in one or more persons acting in a representative capacity, it is taxable as a corporation. For want of these essential characteristics, a limited partnership is to be considered as an ordinary partnership notwithstanding other characteristics conferred upon it by local law.

The Uniform Limited Partnership Act has been

The second issue is in the alternative, if Western Construction Company is held not to be taxable as a corporation, then whether Western Construction Company constituted a bona fide partnership consisting of the general partners and the several limited partners for the taxable years 1942 to 1945, inclusive, or whether it was a partnership consisting only of the three general partners. This was explained in a statement attached to the deficiency notice of petitioner George J. Johnson as follows:

> In the computation of your net income for each year mentioned it is held that you and your spouse are each taxable upon one-sixth of the net income of the business conducted under the name of Western Construction Co. It is held that for income tax purposes your children, Lloyd W. Johnson, Bernice Wallin, Lorraine Ellingson and Rachel Gustafson were not bona fide partners in the business conducted under the name of Western Construction Co. during the taxable years mentioned.

A similar explanation was given in the deficiency notices of petitioners in Docket Nos. 15496, 15497, 15498 and 15500.

Findings of Fact

The facts which were stipulated are so found. Other facts are found from the evidence.

adopted in several States. A limited partnership organized under the provisions of that Act may be either an association or a partnership depending upon whether or not in the particular case the essential characteristics of an association exist.

Petitioner Western Construction Company was created as a limited partnership under the laws of the State of Washington and filed partnership returns for the taxable years 1942 to 1945, inclusive. Petitioners J. A. Johnson, George Johnson and Albin Johnson are the three general partners of petitioner Western Construction Company. Petitioner Huldah Johnson is the wife of George Johnson and petitioner Ellen Johnson is the wife of J. A. Johnson. Their cases are here solely because of their community property status with their husbands and do not require any separate consideration by the Court. Petitioner Lloyd Johnson is a limited partner of Western Construction Company and petitioner Roberta Johnson is his wife. They have stipulated to an adjustment of their deficiencies. If it is held that the limited partnership cannot be recognized for Federal tax purposes, petitioners Lloyd and Roberta Johnson will be entitled to a refund due to the fact that they have included in their tax returns their share of the profits of Western Construction Company.

Petitioners J. A. Johnson, George Johnson and Albin Johnson are brothers, and as young men they emigrated from Sweden and later became naturalized United States citizens. They settled in Seattle, Washington, and each raised a family of several sons and daughters. These brothers were later to become the general partners and their children the limited partners of petitioner Western Construction Company. The brothers were carpenters by trade, and in 1909 George and J. A. formed a partnership

known as Johnson Brothers to engage in the general construction business. In 1934 Albin was admitted to the partnership under an oral agreement making him an equal partner with his two brothers. The partnership operated under the name of the Western Construction Company with offices at Seattle, Washington. At first the partnership built small homes but gradually expanded into larger lines of construction as their capital increased; however, the business was always run as a family affair. The sons of the partners worked for the company from their early teens during school vacations, and the daughters worked as clerks or stenographers prior to the taxable years involved herein.

In 1935 the partnership suffered a large loss in connection with a contract for the construction of bridge piers at the Grand Coulee Dam in the State of Washington. The loss was approximately $100,000 which was all the money the partners had saved during the many years before. While the partners were not forced into bankruptcy, they were deeply in debt, having pledged their homes and all they owned to the bank, and it was necessary that the bonding company complete the Coulee Dam contract. From 1936 to 1940 the Western Construction Company partnership did not actively engage in the construction business. It was not dissolved, however, but was kept alive for the purpose of paying off creditors and prosecuting its claims against the Federal Government.

To enable the partners to continue in business, obtain necessary loans, and pay off their indebted-

ness, the bank and the bonding company advised that they do business as a corporation. On October 9, 1935, a corporation was organized under the name of Western Construction Company, Inc., and the construction work during the years 1936 to 1940 was conducted by that corporation. The bank insisted that the incorporators and officers of the corporation be Roy Johnson, son of J. A. Johnson; Lloyd Johnson, son of George Johnson; and Lucille Easterbrook, the bookkeeper. In accordance with the agreement the stock was issued to them, but the beneficial owners of the stock were the three Johnson brothers and it was so understood by all the parties. The corporation operated by the three brothers succeeded in obtaining various construction jobs, and after a period of about five years from 1936 to 1941 George, J. A., and Albin prospered sufficiently to pay off the entire indebtedness which the Western Construction Company and the three brother partners thereof had incurred as a result of the Coulee Dam project. It was then decided to dissolve the corporation and revert to the partnership form of business. Prior to the dissolution, the incorporators turned over their stock to the three brothers who then became the officers of the corporation. The dissolution was completed in 1942.

While the corporation was still in existence J. A., George and Albin also did some business as general partners of the Western Construction Company. In 1940 they secured a very large contract known as the West Park Housing project at Bremerton, Washington. This contract was performed as a

joint venture composed of the three partners and another individual because the partners did not have the financial backing themselves to secure the necessary bond. It was later discovered that the other joint venturer was of no real financial help to the partnership; however, in spite of this lack of financial assistance, the agreement required a split of the profits. In 1941 the partnership also received the contract for the Rainier Vista project. When work was first started on this job it was thought that there might be difficulties with the weather, possibly resulting in a large loss as in the case of the Coulee Dam project. The contract, however, was a financial success and was completed by Western Construction Company, the limited partnership and a petitioner herein.

Early in 1941 and prior thereto there were discussions among the three brothers, who had no formal engineering training, and their three sons concerning the formation of a partnership consisting of fathers and sons. Lloyd, George's son, and Roy, the son of J. A., were graduate engineers with considerable experience with other firms. Winston, Albin's son, had attended engineering school for three years and except for a short period of military service has worked for his father and the other Johnson brothers in the construction business. On January 6, 1941, articles of copartnership naming the six individuals as partners were prepared and executed by them. That agreement contemplated preserving in the three fathers the value of the assets then owned by the old partnership and allow-

ing the sons to participate, without any capital investments on their own parts, only in the increase in the value of the new partnership from the date of that agreement. That agreement also provided that each of the six partners should actively work for the partnership; that salaries would be determined and paid the six of them based upon their services and thereafter the partnership profits would be divided equally among the six partners. That partnership, however, never actively operated and no books or accounts were ever set up for it.

The Johnson brothers were anxious to bring their children into the business, especially their sons who had the engineering training the brothers lacked. One of the big problems that confronted the brothers was that largely because of their limited finances, they were unable to obtain bonds in order that they might secure the large and more lucrative government contracts. They endeavored to persuade other companies to join them on bids, but the West Park project at Bremerton indicated that this was not a satisfactory solution. They also tried unsuccessfully to get outsiders to invest in the partnership. Faced with the desire to include their children in the business and with the need of additional financial backing, the brothers decided to form a limited partnership in which the brothers would be the general partners and their adult children the limited partners. This decision was made without discussion with tax counsel, accountants, or attorneys as to whether it would be cheaper to do business as a partnership rather than as a corporation. The pro-

posed partnership contemplated that each of the Johnson brothers would have a capital investment of $20,000 and the children of each of the brothers a like capital investment of $20,000 divided equally among the children becoming limited partners. On February 24, 1942, they formed a limited partnership, Western Construction Company, a petitioner herein, consisting of three general partners, the Johnson brothers, and seven limited partners being their three adult sons and four of their adult daughters. The agreement is as follows:

Certificate of Formation of a Limited Partnership

State of Washington,
County of King—ss.

We, J. A. Johnson, George Johnson, Albin Johnson, Roy W. Johnson, Lloyd W. Johnson, Winston A. Johnson, Eleanor J. Rector, Evelyn L. Jorgens, Bernice J. Wallin and Elsie Kiel, the subscribers, having formed a limited co-partnership pursuant to the laws of the State of Washington, do hereby certify and state:

I.

That the name of the co-partnership is Western Construction Company.

II.

That the character of the business is general contracting.

III.

That the location of the principal place of business and office is in the Textile Tower, City of Seattle, County of King, and State of Washington.

IV.

That the name and residence of each member, general and limited partners being respectively designated, are as follows:

General Partners

J. A. Johnson, 1619 East 52nd Street, City of Seattle, County of King, State of Washington.

George Johnson, 4558 55th N.E., City of Seattle, County of King, State of Washington.

Albin Johnson, 2003 Boylston North, City of Seattle, County of King, State of Washington.

Limited Partners

Roy W. Johnson, 1520 Olin Place, City of Seattle, County of King, State of Washington.

Lloyd W. Johnson, Winston A. Johnson, 901 East 71st, City of Seattle, County of King, State of Washington.

Eleanor J. Rector, 220 North Portage Path, City of Akron, County of Summit, State of Ohio.

Evelyn L. Jorgens, N. 603 Walnut Road, City of Spokane, County of Spokane, State of Washington.

Bernice J. Wallin, ..., City of Seattle, County of King, State of Washington.

Elsie Kiel, ..., City of Seattle, County of King, State of Washington.

V.

That the term for which the partnership shall exist is for ten (10) years from January 2nd, 1942.

VI.

That the amount of cash contributed by each Limited Partner is as follows: $10,000 each, by each Limited Partner, except Roy W. Johnson, Eleanor J. Rector and Evelyn L. Jorgens who contributed $6,666.66 each.

VII.

The time when the contribution of each Limited Partner is to be returned, is agreed to be the end of said partnership as above stated, to wit, ten (10) years from January 2nd, 1942.

VIII.

The share of proceeds by way of income which each Limited Partner shall receive by reason of his contribution, is as follows: The General Partners, and each of them, are to receive a salary per year, to be fixed by them in a reasonable amount to cover their superintendence and management of the work and business, in proportion to the amount of work done by them, each year, taking into account the amount of the net profit of the partnership each year, never to exceed the sum of $15,000.00 a year salary to any one of the General Partners.

After the payment of said salaries to said General Partners and deduction of all other expenses of the partnership, the net income or proceeds shall

be divided among the partners both general and limited on the basis of their financial interest in said partnership, as shown by the books of the partnership.

IX.

The General Partners are hereby given the right to admit additional Limited Partners in the future upon the agreement of the General Partners hereto, but in no event other than upon a cash contribution to the partnership, and upon the same terms as herein expressed.

X.

The entire management of the partnership shall be vested in the three General Partners and the right is hereby given to the remaining General Partners to continue the business upon the death or retirement of a General Partner, and the right is also given to the General Partners to continue the business upon the death or retirement of any of the Limited Partners hereto.

XI.

It is understood and agreed between all of the partners that a Limited Partner shall not receive out of partnership property any part of his contribution until all liabilities to the General Partners and Limited Partners on account of their contribution, have been paid or their [sic] remains property of the partnership sufficient to pay them.

XII.

The interests of all the Limited Partners herein

may be transferred upon the approval of the General Partners to accept a new assignee as a Limited Partner in this co-partnership, and not otherwise.

XIII.

No General Partner shall demand or receive any property other than cash in return for his contribution and each General Partner's interest in this partnership shall be fixed as of the date of January 2nd, 1942, by the books of the co-partnership.

In Witness Whereof the partners have hereunto set their hands this 24th day of February, 1942.

/s/ J. A. JOHNSON,

/s/ GEO. JOHNSON,

/s/ ALBIN JOHNSON,

/s/ ELEANOR J. RECTOR,

/s/ ROY W. JOHNSON,

/s/ EVELYN L. JORGENS,

/s/ LLOYD W. JOHNSON,

/s/ BERNICE J. WALLIN,

/s/ ELSIE KEIL,

/s/ WINSTON A. JOHNSON.

The partners and their capital accounts were as follows:

	Capital[4]
General Partners:	
Albin Johnson	$15,000.00
George Johnson	15,000.00
J. A. Johnson	15,000.00
Limited Partners:	
Albin's Children:	
Winston Johnson	10,000.00
Elsie Keil	10,000.00
George's Children:	
Bernice Wallin	10,000.00
Lloyd Johnson	10,000.00
J. A.'s Children:	
Roy Johnson	6,666.66
Eleanor Rector	6,666.66
Evelyn Jorgens	6,666.66

The limited partners made their cash capital contributions to the partnership with money they borrowed from their respective fathers. The fathers drew checks on moneys they had to their credit on the books of Western Construction Company and

[4]Through a bookkeeping error the general partners' capital accounts were shown as $15,000 each. This was corrected to $20,000 each on June 30, 1943, when the second limited partnership was formed. Profits for 1942 were distributed on the book basis of 15/105 for each general partner but should have been on the corrected basis of 20/120. In a recomputation under Rule 50 effect should be given the additional profits attributable to the three general partners because of this bookkeeping error.

delivered these checks to their children. In return each child gave his or her promissory note payable to the father. Each limited partner then gave the limited partnership a check in the amount of the loan in payment of his or her limited partnership interest. The partnership itself did not thereby increase its assets; however, each of the general partners had in his possession $20,000 worth of notes signed by his children. These notes were never pledged as collateral for any loan but they were listed as personal assets of the general partners in applications for construction bonds. On July 30, 1942, an additional $50,000 was borrowed from the bank.

Each of the children knew and understood he was signing a note which was unconditionally payable and which represented a bona fide obligation on his part. They did not take on these obligations lightly as there was considerable discussion about the notes before signing them. While none of the husbands of the Johnson daughters signed any of these notes given to the general partners, generally speaking the notes were signed by the wives with the knowledge and consent of their husbands. Rachel Gustafson, the daughter of George Johnson, was invited to participate in the first limited partnership. However, she declined to do so as both she and her husband did not desire to sign a note for $5,000. They knew that the construction business is subject to heavy losses, as well as handsome profits. Rachel had seen first-hand the Coulee Dam fiasco with its resulting damaging effects to the

partnership. Her husband had changed his course of study at the University from premedical to engineering at the urging of his father-in-law. When he graduated there was no work available in engineering so he entered the meat business and at present is the owner of a butcher shop.

These notes did not provide that they were payable solely from business profits but, on the contrary, there was a general understanding among the limited partners that they were entering a normal business transaction upon the signing of the notes. The financial situation of the limited partners of the 1942 partnership was good, and each had sufficient assets to cover his or her liability on the notes. This was especially true of the three sons of the respective general partners. Two of the sons had already achieved considerable prominence and success in the business world. Though the sons-in-law did not sign the notes, they treated these obligations as resting on their community property. An example of all the notes which were given by the limited partners to their fathers is the note of Eleanor J. Rector given to her father, J. A. Johnson. It reads as follows:

$6,666.66 Seattle, Wash. April 21st, 1942

One year after date, without grace, for value received I promise to pay to the order of J. A. Johnson Six Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents, in Lawful Money of the United States of America, of the present standard value, with interest thereon in like Lawful Money,

at the rate of 4 per cent per annum from date until paid. Interest to be paid at maturity and if not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. And in case suit or action is instituted to collect this note or any portion thereof I promise and agree to pay in addition to the costs and disbursements provided by statute such sum as the court may adjudge reasonable as attorney's fees in said suit.

Due April 21st, 1943.

/s/ ELEANOR J. RECTOR.

On June 30, 1943, a new limited partnership was formed on substantially the same basis as the former one, excepting that three additional daughters were brought into the partnership as limited partners. The additional limited partners consisted of Rachel Gustafson and Betty Lorraine Ellingson, daughters of George Johnson, and Vedola Johnson (now Mrs. Vedola Kent), daughter of Albin Johnson. The capital of the general partners remained at $20,000 each. The capital of the limited partners was changed by consent of all parties as follows:

	Capital
Albin's children:	
Winston Johnson	$6,666.66
Elsie Keil	6,666.66
Vedola Johnson	6,666.66

	Capital
George's children:	
Bernice Wallin	$5,000.00
Lloyd Johnson	5,000.00
Betty Ellingson	5,000.00
Rachel Gustafson	5,000.00
J. A.'s children:	
Roy Johnson	6,666.66
Eleanor Rector	6,666.66
Evelyn Jorgens	6,666.66

None of the new partners made a direct contribution of capital to the partnership. Rachel Gustafson and Betty Lorraine Ellingson each obtained a division of the interests which had been held in the names of their sister and brother, Bernice Wallin and Lloyd Johnson. This was accomplished by the unpaid notes of the latter partners being returned to them by their father and new notes in the amount of $5,000 being given by each of the four children to their father. Vedola Johnson (daughter of Albin) was taken in as a limited partner in the same way as Rachel Gustafson and Betty Lorraine Ellingson, daughters of George, were taken in. She executed her note for $6,666.66 payable to her father. Her brother Winston and her sister Elsie Keil had their notes for $10,000 each returned to them and they each executed their note for $6,666.66 payable to their father. When these new limited partners found that their brothers and sisters had done so well in the 1942 partnership they too wanted to acquire an interest for them-

selves. The interests of the three Johnson families were always kept equal in the various partnerships. The moneys which these adult children borrowed from their fathers and used to invest in the limited partnership were bona fide loans. The general partners had minor children but they were not taken into the partnership because they wanted notes from adults, fully responsible for payment. The notes were negotiable, bore interest, and were all for short terms not exceeding two years, except the first two notes of Lloyd Johnson and his sister Bernice Wallin to their father George Johnson for $10,000 each. These notes were installment notes, payable in yearly installments of not less than $3,500 in any one payment. Some of the notes given by the limited partners were paid in 1945. Lloyd paid his note in 1946, Winston and Elsie paid their notes in 1947. Rachel has not paid her note as no demand has been made for payment from her by her father.

The limited partnerships were very successful and made large net profits which were credited each year to the partners on the basis of their capital accounts. In determining net profits there was first subtracted $15,000 for each general partner as salary. The 1942 profits were several times more than the expectations of the general partners, and the crediting of profits to each partner was more than three and one-half times his capital account; however, the construction business represents a hazardous financial risk and it is possible to lose heavily, as well as realize large profits.

The partnership reported its profits for tax purposes upon a completed contract basis. This was true of the Quartermaster and Rainier Vista contracts which were under way by the time the first partnership was created. Gross profits were realized upon the Quartermaster and Rainier Vista contracts in the respective amounts of $234,866.20 and $201,754.39 which were reflected in the 1942 return of the limited partnership. Division of such profits was made with the limited partners on the basis of their stated partnership interests.

The limited partnership was not the result of an impulse set off by the desire to minimize taxes, but rather the result of many years of thought by the general partners who were anxious to have their sons, daughters, and sons-in-law come into the business so that it would continue after the general partners retired or died. Just prior to the formation of the partnership it appeared that Lloyd and Roy were drifting away from the business to other attractive jobs. Their talents and training were in demand by others. For some years prior to 1942 Lloyd had worked for various individuals and companies other than Western Construction Company. In 1941 Lloyd, contrary to his father's wishes, formed a construction partnership with Max J. Kuney of Spokane, Washington, in which each had a one-half interest. When the Kuney-Johnson partnership was formed there was no plan for its being a permanent association, but that partnership opened offices in Seattle, Washington, and has been successfully active in the construction business

from that time down to the present. Lloyd did not work as an employee of the limited partnership but he did perform important services for the firm. He was a graduate engineer with a great deal of experience. In 1942 and 1943 he was consulted by the general partners on matters relating to pricing and estimating pricing jobs, figuring bids and helping them get scarce materials such as nails which were almost impossible to get. Pricing was a very important work during the war years because prices changed so fast. The partners telephoned Lloyd a great deal on business matters of the company. He also did a great deal of night work helping the general partners on matters relating to engineering, bids and estimates. He did not receive any compensation for this work but he devoted a considerable amount of his time because of his interest as a limited partner. It was of great value to the partnership.

Roy Johnson was engaged for many years prior to 1942 in businesses other than the Western Construction Company. He rendered no regular services to the limited partnership until January, 1943, when he devoted full time to its affairs. In 1942 he assisted the partnership by advising it on estimates and by performing engineering work for it. From January, 1943, until June, 1944, Roy worked full time for the partnership and was paid a salary of $2.05 an hour. During this period he worked as an engineer designing layout foundations, excavating footings, roads, buildings, arches, and super-

intending both large and small jobs. He estimated various projects and did some difficult engineering work which the general partners could not do. In June, 1944, Roy went to Alaska to assist with a hydroelectric project. He remained there until the fall of 1947, working on this project which had no connection with the Western Construction Company.

Winston Johnson, son of Albin Johnson, worked for the partnership at all times after March, 1942, when he was released from the Army. Winston, who had three years of college training as a civil engineer, did various types of work for the firm. He worked in the office, estimated jobs, obtained materials, arranged subcontracts, represented the partnership before the Navy on problems relating to contracts, and supervised jobs. His pay for this work was $80 or $90 a week which was somewhat below the standard for estimators, some of whom earned $30,000 a year working on a salary plus bonus basis.

The daughters did not render any services to the limited partnership of any substantial consequence.

With the exception of Harold Ellingson, Betty's husband, none of the sons-in-law worked for the limited partnership and Ellingson worked as a carpenter for only three months of the taxable years here involved. The general partners hoped that some day most of the sons-in-law would be associated with the partnership.

The partnership profits were regarded by all of the limited partners and their spouses as community

property and in the filing of their returns for the years 1942 to 1945, inclusive, such profits were divided in the returns of the spouses on a community property basis the same as other income. Substantially all of the returns of the limited partners and their spouses for the years 1942 to 1945, inclusive, were prepared at the office of the Western Construction Company by the accountant who handled the affairs of the partnership.

Partnership checks representing distribution of profits were sometimes made out to the limited partners and sometimes to the spouses of the limited partners, depending upon which one requested the money. It was regarded as a family business and no distinction was made as between limited partners or his or her spouse when it came to distributing the profits. There were no profits credited to the accounts of the limited partners and no withdrawals by them until after the close of the taxable year ended December 31, 1942. The limited partners were entitled to withdraw their share of the profits as they pleased and the share of the profits credited to the individual partner's accounts were in no way considered to be anything but their own property. No limited partners ever withdrew any profits and turned them over in any way to the father, the general partner. No limited partner was in any way dependent upon his or her father, the general partner, for support either at the time of the formation of the partnership or later.

The freedom of withdrawals by the limited partners without consulting the general partners is

illustrated by the various uses they made of their profits. Roy Johnson in 1945 withdrew $40,000 to invest in his own construction project in Alaska. At one time he overdrew $6,600 for working capital in his Alaskan project which he returned when the bookkeeper notified him of that fact. Winston Johnson withdrew $2,333.50 to pay for an engagement ring, the cost of his honeymoon, his mother's funeral expenses, and personal items. He also withdrew $2,700 to purchase a lot for his home and later $36,509.79 to invest in the stock of another corporation. Lloyd Johnson withdrew $9,000 of his profits to invest in a restaurant. The greater portion of his withdrawals were for uses other than the payment of income taxes. Elsie Keil used some of her profits to pay personal bills and also withdrew $45,976.52 to buy stock in another corporation. Vedola Johnson withdrew $6,586 of her profits to purchase stock in another corporation. Evelyn Jorgens invested $8,500 of her profits in a chicken ranch. Rachel Gustafson only made withdrawals to pay income taxes as she had no other need for the money. Bernice Wallin withdrew $5,000 of her profits to invest in a real estate business and made a number of other personal withdrawals. Betty Ellingson used some of her profits for personal expenses.

The three general partners managed the limited partnership in the same manner that they had the business which preceded the limited partnership. As general partners, the management and direction

of the business was in their hands and all their personal assets, including the notes of the limited partners, were subject to possible loss in the event the limited partnership failed. The sons who were limited partners worked under the direction of the general partners. Only the general partners could sign checks or notes for Western Construction Company.

There was no delegation of authority by the limited partners to the general partners. The limited partners held no meetings regarding such delegation of authority, elected no officers and representatives and received no certificates or other evidence of their contribution as limited partners, other than the partnership articles.

The limited partnerships were not operated with any of the usual formalities of a corporation or association. There were no officers, no regular or formal meetings, no by-laws, board of directors, seal or minute books. The Western Construction Company held itself out to the public as a true limited partnership. The parties to the limited partnership agreements here involved formed a bona fide partnership and really and truly intended to join together for the purpose of carrying on the business as a partnership. It was not an association taxable as a corporation. Proper statutory notice of the formation of both limited partnerships was given. The limited partnership agreements provided that the general partners could admit additional limited partners and continue the business upon the death or retirement of a general or limited

partner. Those rights could be exercised only by agreement among the general partners.

It was orally stipulated at the hearing that Lloyd Johnson and his wife, Roberta Johnson (petitioners herein), are entitled to additional community expense deductions over those allowed in the deficiency notice issued to them for the years and in the amounts as follows:

Year	Amount
1942	$1,200
1943	1,200
1944	1,200
1945	600

Opinion

Black, Judge:

There are two issues presented in these proceedings, however, they are in the alternative. The first issue is whether petitioner Western Construction Company is an association taxable as a corporation. If it is held that Western Construction Company is not taxable as a corporation but is instead a partnership, then we must decide the second issue, namely, the composition of the partnership for tax purposes. The respondent concedes that he has made inconsistent determinations in determining that Western Construction Company was an association taxable as a corporation and then also determining that the same business during the same period was a general partnership composed of three members. He concedes that both determinations cannot stand.

Issue 1. Respondent first contends that petitioner Western Construction Company resembles an association in corporate form and is, therefore, taxable as a corporation.[5] Morrissey v. Commissioner, 296 U. S. 344 is cited by respondent as the basic authority for taxing Western Construction Company as a corporation, but petitioners also rely upon the Morrissey case to sustain their argument that Western Construction Company is taxable as a partnership. In the Morrissey case the Court said: "The inclusion of associations with corporations implies resemblance; but it is resemblance and not identity." Therefore, it is for us to determine whether Western Construction resembles a corporation to a sufficient extent as to make it taxable as such.

Petitioner Western Construction Company was created as a limited partnership under the laws of the State of Washington, the pertinent sections of which are printed in the margin.[6] This designation

[5]See footnotes 2 and 3, supra.

[6]Remington's Revised Statutes of Washington, Annotated, Volume Ten.

§9966. Limited partnership may be formed. Limited partnership for the transaction of mercantile, mechanical, or manufacturing business may be formed within this state, by two or more persons, upon the terms and subject to the conditions contained in this chapter.

§9967. Of whom composed, and liability of members. A limited partnership may consist of two or more persons, who are known and called general partners, and are jointly liable as general partners now are by law, and of two or more persons who shall contribute to the common stock a specific sum

as a partnership is not conclusive of its being such for tax purposes. To ascertain whether Western Construction Company is taxable as a corporation or a partnership it is necessary to find what the rights and duties of the partners are as between

in actual money as capital, and are known and called special partners, and are not personally liable for any of the debts of the partnership, except as in this chapter specially provided.

§9968. * * *

§9969. * * *

§9970. Renewal of limited partnership. A limited partnership may be continued or renewed by making, acknowledging, filing, and publishing a certificate thereof, in the manner provided in this chapter for the formation of such partnership originally, and every such partnership, not renewed or continued as herein provided, from and after the expiration thereof according to the original certificate, shall be a general partnership.

§9971. * * *

§9972. * * *

§9973. Suits by and against limited partnership—Parties. All actions, suits, or proceedings respecting the business of such partnership shall be prosecuted by and against the general partners only, except in those cases where special partners or partnerships are to be deemed general partners or partnerships, in which case all the partners deemed general partners may join therein; and excepting also those cases where special partners are severally liable on account of sums or amounts received or withdrawn from the capital stock, as provided in the last preceding section.

§9974. Dissolution, how may be accomplished. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate of partnership, unless a notice of such dissolution, subscribed by the general

themselves and the public. Therefore, we must examine the statutes of the State of Washington by virtue of which Western Construction Company exists as a limited partnership in Washington, and the certificate of the formation of the partnership filed with the county auditor.

The certificate of formation of the limited partnership[7] reserves the following powers: the duration of the partnership is 10 years;[8] the general partners are given the right to admit additional limited partners upon the same terms expressed in this certificate;[9] the management is vested in the general partners;[10] the remaining general partners are given the right to continue the business upon the death or retirement of a general or limited partner;[11] the interest of a limited partner is transferable only

and special partners, is filed with the original certificate of partnership, or the certificate, if any, renewing or continuing such partnership, nor unless a copy of such notice be published for the time and in the manner prescribed for the publication of the certificate of partnership.

§9975. Liabilities and rights of members of firm. In all cases not otherwise provided for in this chapter, all the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

[7]Findings of fact, page 9, supra.

[8]Id. Article V and VII.

[9]Id. Article IX.

[10]Id. Article X.

[11]Id. Article X.

with the approval of the general partners;[12] and no general partner may demand or receive any property other than cash in return for his contribution.[13]

We think that the case of Glensder Textile Co., 46 B.T.A. 176, is indistinguishable from the instant proceedings except that Glensder Textile Co. was a limited partnership formed under the Uniform Limited Partnership Act of the State of New York, whereas the limited partnership here was organized under the laws of the State of Washington. There seems to be no substantial difference between the two statutes. In the Glensder Textile Co. case we held that the limited partnership did not resemble a corporation, but was more closely akin to a general partnership. See also J. A. Riggs Tractor Co., 6 T.C. 889; George Brothers & Co., 41 B.T.A. 287. In the Glensder Textile Co. case, after discussing in considerable detail the several provisions of the limited partnership agreement there present and which were similar in character to those of the limited partnership agreement in the instant case, we said:

> We must conclude, therefore, after an examination of the organization and legal powers and liabilities of the members of the limited partnership before us, that it does not bear such a resemblance to an association or operate effectively as such so as to justify our inclusion of it in that category for tax purposes. Although

[12]Id. Article XII.

[13]Id. Article XIII.

> a limited partnership, it was still a partnership, and should be treated as such under the statute. The statute provides a category for individuals doing business in partnership and deriving income thus; and we may not disregard it where the likeness to an association is no plainer than it is here.

In the Glensder Textile Co. case we set out in the margin the applicable statute and the Treasury regulations with reference to limited partnerships. They are also set out in our footnotes 2 and 3 herein and it is unnecessary to reprint them here. Following our decision in that case, we hold that petitioner Western Construction Company was not an association taxable as a corporation. On this issue petitioner is sustained.

Issue 2. As we have held that Western Construction Company is a partnership for tax purposes, we must now determine the composition of that partnership.

Respondent contends that if Western Construction Company is held to be a partnership for Federal tax purposes, it consists solely of the three general partners. Petitioners contend that Western Construction Company is a partnership for tax purposes and includes all the limited partners. Both parties cite the cases of Commissioner v. Tower, 327 U. S. 280 and Lusthaus v. Commissioner, 327 U. S. 293. Since the hearing of these proceedings and the filing of briefs, the Supreme Court has decided the case of Commissioner v. Culbertson, 337 U. S. 733. From these cases it is apparent that in order to determine the issue it is necessary for us to find whether West-

ern Construction Company is a bone fide business partnership and upon such finding the tax consequences rest.

Respondent argues that the formal documents executed in 1942 and 1943 creating a limited partnership under the laws of the State of Washington are nothing more than a reallocation of the income attributable to the general partners, and that there was no real intent to create a partnership for business purposes. Petitioners argue that the partnership is a result of a bona fide intent of the general and limited partners to join together for the purposes of carrying on the construction business and to share in the profits and losses. Their intention in this respect is a question of fact to be determined from the agreement and by their conduct in its execution and in the subsequent operation of the business. As was said in Commissioner v. Culbertson, supra:

> * * * The question is not whether the services or capital contributed by a partner are of sufficient importance to meet some objective standard supposedly established by the Tower case, but whether, considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join to-

gether in the present conduct of the enterprise. * * *

At this juncture it seems appropriate to point out that the Commissioner himself in his determination of the deficiencies against Western Construction Company has determined that Western Construction Company should be recognized as a bona fide organization in which the members of it joined together for a business purpose. He contends. however, that the organization should be treated as an association taxable as a corporation and not as a limited partnership. That is his first and main contention. Failing in that, he contends in the alternative that the partnership should be held a general partnership with no recognition given to the limited partners.

The record shows that prior to the formation of the limited partnership the general partners were having difficulty in getting the larger and more lucrative government contracts because of their inadequate financial backing. This lack of capital made it extremely difficult to get the necessary construction bonds. To obviate this difficulty, the partners attempted to get outside capital but were unsuccessful, and the one time a joint venture was attempted to obtain the necessary bond Western Construction Company came out on the short end of the bargain. In bringing in the children as limited partners, $60,000 was added to the individual assets of the general partners by reason of the personal notes given by the children to their respective fathers. This was a factor of considerable impor-

tance to the financial status of the general partners and, through them, to the limited partnership.

The evidence convinces us that these notes were not given as a part of a scheme to avoid taxes but were given to increase the financial strength of the partnership. Cf. O. H. Delchamps, 13 T. C. 281. In the Delchamps case, two brothers and their sister, equal partners in a chain grocery business, admitted the brothers' wives as partners, each brother contributing two-fifths of his interest to his wife and the sister a one-fifth of her interest to each wife. The admission of the wives as partners was necessary for the purpose of securing bank credit for the business. Under these circumstances we held that the partnership was formed for a valid business purpose with a bona fide intention to form a business partnership. We think the Delchamps case supports the validity of the partnership agreement here involved. It is true that these notes were never used as collateral by the partnership, but shortly after its formation the limited partnership borrowed an additional $50,000 from the bank and the notes were listed with the bonding companies as a part of the personal assets of the general partners. There was no plan whereby these notes would be payable only out of profits—it was a business transaction in which the adult children participated with full knowledge of the attending responsibilities in signing these notes, and with the consent of the sons-in-law.

Profits were distributed as in any normal partnership and the limited partners had the right to withdraw their shares of the profits at any time and use them for whatever they might desire. The ma-

jority of the limited partners did not withdraw a great deal of their profits; however, they had the right to do so and some of the limited partners withdrew a considerable portion of their distributive shares and used the funds as they saw fit. Cf. John A. Morris, 13 T. C. .., promulgated December 21, 1949. The Morris case involved a limited partnership organized under the laws of the State of New York, as was the limited partnership in Glensder Textile Co. case, supra. In the Morris case we held that Edna B. Morris, wife of the taxpayer John A. Morris, was a partner in the limited partnership there involved even though the capital which she contributed to the partnership came from a prior gift which she received from her husband and even though she did not render any services nor did she ever participate in the management of the business. We based our holding that she was a limited partner on a finding which we made from the evidence that "Petitioner, his wife, and the other members of the brokerage firm formed a bona fide partnership and really and truly intended to join together for the purpose of carrying on the business as a partnership." We relied as our chief authority for the holding upon Commissioner v. Culbertson, supra.

We think that the evidence shows that the three Johnson brothers had a real desire to have their children become partners in the Western Construction Company. The sons not only gave their notes, but also contributed their engineering skill which the general partners lacked. Their services were of substantial value to the partnership. All of the limited

partners were conscious of the fact that the partnership was real and the promissory notes given their respective fathers were binding obligations.

Looking at the evidence as a whole, we think that petitioner Western Construction Company was intended and created as a valid business partnership including all the limited partners and must, therefore, be recognized as such for tax purposes. John A. Morris, supra.

The parties have stipulated that each of the three general partners expended $1,200 "for each of the years 1942, 1943, and 1944 in excess of that determined and allowed by respondent in the deficiency notices, as business expenses, covering depreciation, insurance and operating expenses of automobiles, and also entertainment and travel expenses." From the stipulation it is apparent that a total of $3,600 for each of these years was expended as additional ordinary and necessary expenses of the business. These expenses are not allowable as a deduction from the personal returns of the general partners as they are partnership expenses and are so deductible. Hiram C. Wilson, 17 B. T. A. 976. In a recomputation under Rule 50 these expenses should be deducted in computing partnership net income for each of the years 1942, 1943 and 1944.

Reviewed by the Court.

Decisions will be entered under Rule 50.

Turner, J., dissents.

Opper, J., dissenting:

The two issues before us cannot be neatly severed, so that we can separately deal with the reality of the partnership and its resemblance to a corporation. For the first time since Tower, Lusthaus and Culbertson, this case raises the question whether a family enterprise cast in the form of a limited partnership, just because it truly represents an actual form of doing business, is not in reality more nearly like a corporation than any other business organism. The very aspects upon which petitioners rely to strengthen their claim of a valid partnership and yet to explain the relation to the business of the "limited partners" are in fact and in essence the Morrissey[1] type of corporate characteristics.[2]

In Glensder Textile Co., 46 B. T. A. 176, decided before Tower and Lusthaus, the Board was not confronted by the juxtaposition of a developed family partnership rule with the similarity of limited family partnerships to corporations, and hence it cannot be regarded as controlling this question. It is for that reason, at least, less persuasive than a more recent decision of this Court holding certain family limited partnerships to be taxable as

[1]See footnote 4.

[2]"* * * namely, centralized control and management, limited liability, transferability of interests, title to property held in the name of the business entity, continuity of enterprise, and sustained operation of the business for profit. * * *" (Giant Auto Parts, Ltd., 13 T. C. 307, 315.)

corporations.[3] Giant Auto Parts, Ltd., 13 T. C. 307.

Without placing undue reliance on relevant provisions of local law, it cannot altogether lack significance that the Constitution of the State of Washington in the article referring to "corporations" provides that: "All laws relating to corporations may be altered, amended, or repealed by the legislature at any time, and all corporations doing business in this State may, as to such business, be regulated, limited, or restrained by law," Article 12, section 1; that "the term 'corporations,' as used in this article shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or partnerships * * *," Article 12, section 5; and that the Supreme Court of the State has declared that "Under constitutional provisions similar to Section 5, article 12 supra, it is almost uniformly held that joint-stock companies and limited partnerships organized under statutory authority are in fact corporations." State ex rel. Range, et al., v. Hinkle, 126 Wash. 581, 219 Pac. 41, 42. (Emphasis added.)

[3] "It is true that the ownership of the business was confined to a few members of an intimate family group, that no regular or formal meetings were held, that no minutes were kept, and that no election of officers was held after the original execution of the partnership agreement. The petitioner's failure to observe the formalities in respect to meetings and elections and the fact that it was owned by a small number of persons have no bearing upon its classification as a corporation or partnership. * * *" (Giant Auto Parts, Ltd., supra.)

And while nomenclature is not, of course, decisive, it may nevertheless be added that the Washington statutes under which petitioner "company" was formed refer to the capital of the enterprise as "common stock" and "capital stock," and that in one instance it is provided: "* * * no part of the capital stock thereof shall be withdrawn, nor any division of interests be made, so as to reduce such capital stock below the sum stated in the certificate of partnership * * *." Remington's Revised Statutes, Washington, Vol. 10, sections 9967, 9972. In fact, if the general partners are thought of as common stockholders, and the special partners as holders of participating preferred stock, the entire arrangement would be identical in all respects with a corporate structure, except for the unlimited liability of the general partners. Since it is similarity and not identity which constitutes the test, Morrissey v. Commissioner,[4] and since it is the

[4]296 U. S. 344:

"The inclusion of associations with corporations implies resemblance; but it is resemblance and not identity. * * * Thus an association may not have 'directors' or 'officers,' but the 'trustees' may function 'in much the same manner as the directors in a corporation' for the purpose of carrying on the enterprise. The regulatory provisions of the trust instrument may take the place of 'by-laws.' And * * * it cannot be considered to be essential to the existence of an association that those beneficially interested should hold meetings or elect their representatives. Again * * * the test of an association is not to be found in the mere formal evidence of interests or in a particular method of transfer.

* * *

"It is no answer to say that these advantages flow

interest of the special partners, and not that of the general partners, which raises the real present issue on both alternative contentions, it seems to me inescapable that this arrangement fails on the one hand to bear any resemblance to a true and actual partnership of all the participants, see Hill, Judge, dissenting in John A. Morris, 13 T. C., ... (Dec. 21, 1949), but that on the other, it does resemble and almost duplicates a corporation, and that reality thus requires the tax to be imposed upon it as a corporation and not as a partnership.

Leech, Hill, Disney, Harron, and LeMire, JJ., agree with this dissent.

Served March 23, 1950.

from the very nature of trusts [here limited] partnerships. * * * The suggestion ignores the postulate that we are considering those trusts [family partnerships] which have the distinctive feature of being created to enable the participants to carry on a business and divide the gains which accrue from their common undertaking, trusts that thus satisfy the primary conception of association and have the attributes to which we have referred, distinguishing them from [ordinary] partnerships. In such a case, we think that these attributes make the trust sufficiently analogous to corporate organization to justify the conclusion that Congress intended that the income of the enterprise should be taxed in the same manner as that of corporations." (Emphasis and bracketed language added.)

[Title of Tax Court and Cause.]

Docket Nos. 15495, 15496, 15497, 15498, 15499, 15500

CLERK'S CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 95 inclusive, constitute and are all of the original papers and proceedings, except Exhibits 1 thru 28 and A thru BB, (Exhibit 29, marked for identification only and not of record) on file in my office as the original and complete record in the proceedings before The Tax Court of the United States in the above cases, entitled: "Commissioner of Internal Revenue, Petitioner, v. Western Construction Company, Albin Johnson, Ellen M. Johnson, Huldah Johnson, George J. Johnson, J. A. Johnson, Respondents," Dkt. Nos. 15495 thru 15500, respectively, and in which the respondents in The Tax Court proceedings have initiated appeals as above numbered and entitled together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office. The exhibits are separately certified.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 27th day of December, 1950.

[Seal] /s/ VICTOR S. MERSCH,
Clerk.

[Endorsed]: No. 12806. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Western Construction Company, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Albin Johnson, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Ellen M. Johnson, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Huldah Johnson, Respondent. Commissioner of Internal Revenue, Petitioner, vs. George J. Johnson, Respondent. Commissioner of Internal Revenue, Petitioner, vs. J. A. Johnson, Respondent. Transcript of the Record. Petitions to Review Decisions of the Tax Court of the United States.

Filed: January 3, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12,806

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

WESTERN CONSTRUCTION COMPANY, ALBIN JOHNSON, ELLEN M. JOHNSON, HULDAH M. JOHNSON, GEORGE J. JOHNSON, J. A. JOHNSON,
Respondents.

MOTION TO BE RELIEVED FROM PRINTING OR REPRODUCING CERTAIN EXHIBITS

Comes now the Commissioner of Internal Revenue, petitioner above named, by his attorney, Theron Lamar Caudle, Assistant Attorney General, and respectfully applies to and moves this Court for an order providing that the following exhibits need not be printed or otherwise reproduced in the printed record on review, namely, Petitioners' Exhibits 2, 4-11, inclusive, 17, 19, 24 and 25; Respondents' Exhibits A, B, D-G, inclusive, and I-BB, inclusive, but that said exhibits may be referred to by counsel in their respective briefs and on oral argument, or reproduced, in whole or in part, in their respective briefs, and considered by the Court with the same force and effect as if included in the printed record on review.

It is further stated that the original of the said

exhibits above mentioned have been forwarded to the Clerk of this Court by the Tax Court and have been filed in this Court in the above-entitled case as part of the record, and are available for examination by the Court.

This application is based upon the ground that the aforesaid exhibits are voluminous and include numerous tax returns, and cannot readily be printed without excessive and disproportionate cost, and are, in any event, available to this Court as aforesaid, and on file in original form.

January . ., 1951.

/s/ THERON LAMAR CAUDLE,
Assistant Attorney General,
Attorney for Petitioner.

To: Ralph B. Potts, Esquire, 1702 Hoge Building, Seattle 4, Washington, Attorney for Respondents.

So ordered:

/s/ WILLIAM DENMAN,

/s/ H. T. BONE,

/s/ WALTER L. POPE,
Judges, U. S. Court of Appeals for the Ninth Circuit.

Certificate of Service attached.

[Endorsed]: Filed U.S.C.A. January 18, 1951.

[Title of Court of Appeals and Cause.]

Docket Nos. 15495, 15496, 15497,
15498, 15499 and 15500

STATEMENT RE DIMINUTION OF RECORD

To the Clerk of The Tax Court of the United States:

Pursuant to the provisions of Rule 75(o) of the Federal Rules of Civil Procedure adopted by the United States Court of Appeals for the Ninth Circuit, you are hereby notified that the petitioner on review will not exclude or omit any part of the record in this proceeding.

/s/ THERON L. CAUDLE, C.A.R.
Assistant Attorney General.

/s/ CHARLES OLIPHANT, C.A.R.
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of Service attached.

Received and filed T.C.U.S. December 21, 1950.